Administrative Register of Kentucky

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IN THIS ISSUE

NOTE: The April meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—Wednesday, April 27, 1983, at 10 a.m. in Room 103 of the Capitol Annex.

This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

Persons having an interest in the subject matter of a proposed regulation published herein may request a public hearing or submit comments within 30 days of the date of this issue to the official designated at the end of each proposed regulation.

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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		Bureau, Division or Major Function		Specific Area of Regulation

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Public Hearings Scheduled

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Public hearings have been scheduled on **401 KAR 5:090, Control of water pollution from oil and gas facilities** [9 Ky.R. 1070] on the following dates:

April 5, 1983 at 10 a.m. EST, Capital Plaza Tower, Frankfort, Kentucky.
April 7, 1983 at 7 p.m. EST, Natural Bridge State Park, Slade, Kentucky.
April 12, 1983 at 7 p.m. CST, Adair County High School, Columbia, Kentucky.
April 14, 1983 at 7 p.m. CST, Executive Inn, Owensboro, Kentucky.

DEPARTMENT OF EDUCATION

A public hearing will be held on April 12, 1983, at 9 a.m., in the State Board Room, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

703 KAR 2:010. Terms and months. [9 Ky.R. 1036]
704 KAR 3:304. Required program of studies. [9 Ky.R. 1037]
704 KAR 3:305. Minimum unit requirements for high school graduates. [9 Ky.R. 1037]
704 KAR 10:022. Elementary, middle and secondary schools standards. [9 Ky.R. 1038]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-253
March 9, 1983

EMERGENCY REGULATIONS
Department of Agriculture
Division of Livestock Sanitation

WHEREAS, the Kentucky Department of Agriculture cooperates with the United States Department of Agriculture in monitoring certain livestock diseases, including Contagious Equine Metritis (CEM); and

WHEREAS, the equine population of the Commonwealth and the United States is at risk of exposure to CEM from equine livestock imported for breeding purposes; and

WHEREAS, in order to prevent exposure of the equine population to CEM it is necessary to implement as rapidly as possible regulations which are consistent with the various federal regulations governing examination and treatment of CEM; and

WHEREAS, the Commissioner of the Department of Agriculture has determined that it is necessary to control the breeding and transportation of animals which have been in contact with infected animals or have in fact been infected with CEM; and

WHEREAS, the Commissioner of the Department of Agriculture has approved regulations covering the sale and treatment of infected stallions and high-risk and medium-risk mares and has determined in writing that an emergency exists with respect to these regulations:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Commissioner of Agriculture that an emergency exists and direct that the attached regulations become effective immediately upon being filed with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:110E. Treatment of imported mares.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
EFFECTIVE: March 11, 1983
NECESSITY AND FUNCTION: To establish a technique for treatment of mares imported into Kentucky from any country *listed in 78 Code of Federal Regulations 92.2 as a country infected with contagious equine metritis* [outside the continental United States, its territories and possessions].

Section 1. As used in this regulation, unless the context clearly requires otherwise:

(1) "Mare" means a female horse over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of CFM bacterium.

(4) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any mare imported into Kentucky from any country *known to be infected with CEM* [outside the continental United States, its territories and possessions], shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:

(1) For five (5) consecutive days the veterinarian shall aseptically clean and wash external genitalia, vaginal vestibule and clitoral fossa with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the external genitalia and vaginal vestibule with an ointment of not less than two-tenths (0.2) percent nitrofurozone insuring that the clitoral fossa is filled.

(2) After the treatment, the mare shall undergo a seven (7) day rest period.

(3) Non-pregnant mares. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. He shall also collect one (1) additional sample from the endometrium of the uterus during estrus. All samples shall be submitted to a state or federal laboratory.

(4) Pregnant mares. These mares must remain on a state approved premise until all tests results are complete on both mare and foal. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a state or federal laboratory for culture.

(5) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.

(6) *Imported mares bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred that day, and the stallion will be scrubbed and treated after breeding. The imported mare and the next three (3) mares bred to the same stallion will have a CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.* [All mares entering Kentucky for quarantine and testing procedures must remain in the state for breeding and results of the post-breeding CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.]

[Section 3. This regulation shall also apply to: (1) Any mare imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.]

[(2) Any imported mare, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.]

ALBEN W. BARKLEY II, Chairman
ADOPTED: February 24, 1983
RECEIVED BY LRC: March 11, 1983 at 9:30 a.m.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:130E. Treatment of contagious equine metritis.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 13.082, 257.030
EFFECTIVE: March 11, 1983
NECESSITY AND FUNCTION: Establishes the required treatment standards for equines quarantined for the purpose of controlling contagious equine metritis (CEM) within the Commonwealth.

Section 1. Definitions. (1) "High risk mare" is a mare that is culture positive and/or CF positive after being bred to an infected stallion before stallion was removed from service and treated.

(2) "Medium risk mare" is a mare that is CF negative and culture negative but bred to an infected stallion prior to treatment.

(3) "Infected stallion" is a breeding stallion proven or believed to be a carrier of the CEM organism.

Section 2. Sale and Movement of CEM Infected or Exposed Equines. No CEM high risk, medium risk or imported mares or stallions shall be sold or transported unless authorization from the state veterinarian is obtained prior to such sale or movement.

Section 3. High risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify [that] the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Post-surgical treatment (to be started no sooner than seven (7) days after surgery).

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(3) Post-treatment culture requirements (to be started no sooner than seven (7) days after treatment). Three (3) consecutive sets of negative cultures will be taken from the endometrium and clitoral fossa. These cultures taken at not less than seven (7) day intervals. One (1) endometrial culture shall be taken at estrus.

(4) Prebreeding cultures (to be taken in following year). One (1) set of cultures will be taken from the endometrium. Three (3) sets of the clitoral fossa taken no less than seven (7) day intervals.

(5) *A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying high risk mares to enter the breeding shed. High risk mares will be prophylactically scrubbed before being covered, (bred last in line) and the stallion scrubbed and treated after breeding. The high risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.* [High risk mares will require a breeding permit and must be bred last in line and the stallion scrubbed and treated after breeding.]

(6) High risk mares that do not conceive on the first heat period shall have an additional set of cultures taken in early estrus and submitted to the laboratory prior to cover for the subsequent heat period. Laboratory results need not be completed.

(7) High risk mares will not be released until they have had one (1) set of negative cultures taken after January 1st of the following year. The endometrial culture for foaling mares must be taken at not less than seven (7) days after foaling.

Section 4. Medium risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted for culture to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Pretreatment culture requirements. Following surgery three (3) negative cultures from the clitoral fossa will be required. The first not less than seven (7) days following surgery and each culture taken not less than intervals of seven (7) days (the third culture would therefore be taken no sooner than day twenty-one (21) following surgery).

(3) Treatment.

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling of the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(4) Post-treatment culture requirements—cultures to be taken no sooner than seven (7) days after treatment and after January 1st of following year.

(a) Foaling mares. Three (3) cultures from the clitoral fossa at not less than seven (7) day intervals will be required. One (1) endometrial culture shall be taken no less than seven (7) days after foaling. The foal will have one (1) culture; if female, from the vaginal vestibule; if male, from the prepuce.

(b) Barren mares which qualified for breeding during current season will also have one (1) endometrial culture taken during early estrus and three (3) clitoral fossa cultures at not less than seven (7) day intervals.

(5) *A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying medium risk mares to enter the breeding shed. Medium risk mares will be prophylactically scrubbed before being covered, bred last in line and the stallion scrubbed and treated after breeding. The medium risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.* [Medium risk mares that do not meet the above requirements for quarantine release will be treated as high risk.]

Section 5. Stallions quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) The following treatment must be carried out with the stallion in full erection and with the operator wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and the folds of the sheath.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(2) The stallion may be returned to service twenty-four (24) hours after the final treatment. The first two (2) mares bred by the stallion must be cultured from the cervix, clitoral fossa and clitoral sinus on days two (2) and four (4) after being covered and each of the first two (2) mares must have a CF test for CEM performed on days fifteen (15) and twenty-five (25) after being covered.

ALBEN W. BARKLEY, II, Chairman
ADOPTED: February 24, 1983
RECEIVED BY LRC: March 11, 1983 at 9:30 a.m.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:140E. Breeding shed for female equine.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
EFFECTIVE: March 11, 1983
NECESSITY AND FUNCTION: To establish the necessary requirements to allow female equine over 731 days of age to enter a breeding shed in Kentucky.

Section 1. Definitions. (1) "Breeding" means natural or artificial insemination of a mare.

(2) "CF test" means a complement-fixation test of equine serum for the detection of specific antibodies of CEM bacterium.

(3) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Maiden mares over 731 days of age at the time of importation coming from any country outside the continental United States, its territories and possessions with the exception of Canada will have one (1) negative prebreeding CF test and two (2) sets of negative cultures. One (1) set of cultures must be obtained in early estrus; the second may be taken during a period of seven (7) to fourteen (14) days before or after the culture in estrus. The imported maiden and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 3. Mares over 731 days of age imported from countries not known to be infected with CEM will have one (1) negative prebreeding CF test and two (2) negative sets of cultures. One (1) set of cultures must be obtained in early estrus; the second may be taken during a period of seven

(7) to fourteen (14) days before or after the culture is estrus. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 4. Mares over 731 days of age imported from countries known to be infected with CEM will be prophylactically scrubbed before breeding, bred last in line and the stallion scrubbed and treated after breeding. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 5. Domestic and Canadian mares not CF tested during the previous breeding season will have the results of one (1) set of cultures before entering the breeding shed.

Section 6. Maiden domestic and maiden Canadian mares are exempt from CF test and culture requirements.

ALBEN W. BARKLEY, II, Chairman
ADOPTED: February 24, 1983
RECEIVED BY LRC: March 11, 1983 at 9:30 a.m.

JOHN Y. BROWN, JR. GOVERNOR
Executive Order 83-187
February 22, 1983

EMERGENCY REGULATIONS
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible under Section 194.050 of the Kentucky Revised Statutes for setting forth, by regulation, the policies of the Cabinet with regard to administration of the Food Stamp Program; and

WHEREAS, through enactment of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, Public Law 97-98, the Food Stamp and Commodity Distribution Amendments of 1981, and Public Congress has revised the requirements as to definitions, eligibility requirements, application process, certification process, and coupon issuance procedure for the Food Stamp Program; and

WHEREAS, pursuant to these federal acts, the revisions are to become effective January 1, 1983, February 1, 1983, and April 1, 1983, in accordance with dates set through the regulatory process by the Secretary of the United States Department of Agriculture; and

WHEREAS, the Secretary has found that to conform with requirements of Public Law 97-35, Public Law 97-98, and Public Law 97-253, it is necessary to revise the definitions, eligibility requirements, application process, certification process, and coupon issuance procedures for the Food Stamp Program in the Commonwealth of Kentucky; and

WHEREAS, the Secretary has found in writing that an emergency exists with respect to said regulation and that, therefore, said regulations, pursuant to the provisions of KRS 13.088(1), should become effective upon filing with the Legislative Research Commission.

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, do hereby acknowledge the finding of the Secretary of the Cabinet for Human Resources that an emergency exists with respect to the filing of said regulations on Definitions, Eligibility Requirements, Application Process, Certification Process, and Coupon Issuance Procedures, and hereby direct that said regulations shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:010E. Definitions.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: February 25, 1983
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary, shall by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions for terms used by the cabinet in regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service, hereinafter referred to as FNS, which is completed by a household member or authorized representative; or for household consisting solely of public assistance recipients, it may also mean the application form used to apply for public assistance, including attachments approved by FNS, which is completed by a household member or authorized representative.

(2) "Authorization to participate card," ATP, means the document which is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities: making application for the program, obtaining the coupons, using the coupons. Authorized representatives will be disqualified for program abuse in accordance with 7 CFR 273.1(f).

(4) "Certification" means the action necessary to determine eligibility of a household. Such action includes interviews, verification and decisions.

(5) "Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer

meals at concessional prices to elderly persons or SSI recipients and their spouses.

(6) "Coupons" mean any stamp, coupon or type of certificate issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(7) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(8) [(7)] "Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the cabinet or agencies designated by the Governor as responsible for the administration of the state's programs for alcoholics and drug addicts.

[(8) "Elderly person" means a person sixty (60) years of age or older.]

(9) "Elderly or disabled member" means a member of a household who, effective September 8, 1982, meets the criteria set forth in 7 CFR Part 271.2 as follows:

(a) Is sixty (60) years of age or older or will become sixty (60) in the month of application;

(b) Is receiving SSI benefits under Title XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;

(c) Is a veteran with a service-connected disability rated or paid as total under Title 38 of the United States Code or is considered in need of regular aid and attendance or permanently housebound under said title of the code;

(d) Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered to be permanently incapable of self-support under Title 38 of the United State Code; or

(e) Is a surviving spouse or child of a veteran and entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act.

(10) [(9)] "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption of eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(d) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act; or

(f) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents.

(11) [(10)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(12) [(11)] "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(13) [(12)] "Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113) including any subsequent amendment thereto.

(14) [(13)] "Group living arrangement" means a public or private nonprofit residential setting that serves no more than sixteen (16) residents and is appropriately certified. Residents must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act to be eligible for food stamps.

(15) [(14)] "Head of household" is the person in whose name the application for participation is made.

(16) [(15)] "Household" means *an individual(s) living alone or with others or a group of individuals living together where living quarters are shared.* [any of the following individuals or groups of individuals provided that such individuals or groups are not residents of an institution, and provided that separate household status shall not be granted to a spouse of a member of the household, to children under eighteen (18) years of age under the parental control of a member of the household, to nonelderly parents (regardless of their marital status) and children who live together, or to a boarder:]

(a) A household may be composed of any of the following individuals or groups of individuals, provided that such individuals or groups of individuals are not residents of an institution, residents of a commercial boarding house, or living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection 24(b) of this section:

1. [(a)] An individual living alone;

2. [(b)] An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

3. [(c)] A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

4. Effective February 1, 1983, an individual who is sixty (60) years of age or older living with others (and the spouse of such individual) who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability, provided that the income of the others, excluding the income of said individual's spouse, with whom said individual resides does not exceed 165 percent of the Food Stamp Program's gross monthly income eligiblity standard.

(b) In no event shall separate household status or, effective February 1, 1983, nonhousehold member status be granted to:

1. Parents and natural, adopted or stepchildren, unless at least one (1) parent is elderly or disabled as defined in subsection (9) of this section;

2. Children under eighteen (18) years of age under the parental control of an adult member of the household;

3. A spouse of a member of the household;

4. Effective February 1, 1983, siblings (natural, adopted, half or stepbrothers and sisters), unless at least one (1) sibling is elderly or disabled as defined in subsection (9) of this section.

(17) [(16)] "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(18) [(17)] "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(19) [(18)] "Institution of higher education" means any

institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to colleges, universities, and vocational or technical schools.

[(19) "Low-income household" means any household whose gross income does not exceed 130 percent of the Office of Management and Budget poverty guidelines, with the following exceptions: Households in which one (1) of the members is sixty (60) years of age or older, or one (1) of the members receives Supplemental Security Income (SSI) under Title XVI of the Social Security Act or disability and blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act shall not have net income exceeding 100 percent of the Office of Management and Budget poverty guidelines.]

(20) "Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which the cabinet has contracted for the preparation of meals at concessional prices to elderly persons and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(21) "Medicaid" means medical assistance under Title XIX of the Social Security Act, as amended.

(22) "Non-assistance household" hereinafter referred to as NA, means a household containing members who are not included in a public assistance household, hereinafter referred to as PA, grant.

(23) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(24) "Nonhousehold member" means individuals residing with a household but not considered household members in determining the household's eligibility or allotment. Nonhousehold members who are otherwise eligible may participate in the program as separate households.

(a) Roomers. Individuals to whom a household furnishes lodging, but not meals, for compensation.

(b) Boarders. Individuals to whom a household furnishes lodging and meals with the following restrictions:

1. *Effective January 1, 1983, boarders may participate as part of the household with whom they reside at said household's request (if the household meets food stamp program eligibility requirements) but not as a separate household.* [Boarder status shall not be granted to a spouse of a member of the household, non-elderly parents (regardless of marital status) and children who live together even if they do not prepare or eat meals together, or to children under eighteen (18) years of age under the parental control of a member of the household.]

2. Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals.

(c) Live-in-attendants. Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

(d) Ineligible students. Students not meeting eligiblity requirements as set forth in 7 CFR 273.5.

(e) Disqualified individuals. Individuals disqualified for fraud, for failure to meet the citizenship or eligible alien status as set forth in 7 CFR 273.2(f)(1)(ii), 273.2(f)(2)(ii), and 273.4 or for failure to meet social security number requirements as set forth in 7 CFR 273.6.

(f) Others. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

(25) "Overissuance" means the amount by which coupons issued to a household exceeds the amount such household was eligible to receive.

(26) "Public assistance" hereinafter referred to as PA, means any of the programs authorized by the Social Security Act of 1935, as amended; old age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed parents, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.

(27) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(28) [(27)] "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(29) "Sponsor" means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry/admission into the United States as a permanent resident.

(30) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.

(31) [(28)] "Spouse" refers to either of two (2) individuals:

(a) Who would be defined as married to each other under applicable state law; or

(b) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(32) [(29)] "Striker" means anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees, unless otherwise exempt from work registration for reasons other than employment. *Effective January 1, 1983, said exemption must have existed on the day prior to the strike in order for an individual to not be considered a striker.*

(33) [(30)] "Supplemental security income (SSI)" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind and disabled.

(34) [(31)] "Thrifty food plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty-four (54), a child six (6) through eight (8), and a child nine (9) through eleven (11) years of age, determined in accordance with the Secretary of United States Department of Agriculture's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(35) [(32)] "Underissuance" means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

JOHN CUBINE, Commissioner
ADOPTED: February 10, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: February 25, 1983 at 2:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:020E. Eligibility requirements.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: February 25, 1983
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service, of the United State Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and non-financial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Non-financial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) non-farm income poverty guidelines.

Section 2. Countable Income. *All income from any source shall be counted, except income specifically excluded in Section 3, including but not limtied to:* [The following, when received by any household member, shall be considered as income:]

(1) [All] Wages *earned by a household member* [and salaries of an employee], including all wages [and salaries] received by a striker the month prior to the month of the strike, *or effective January 1, 1983, the month of application, in accordance with 7 CFR Part 273.1(g).*

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR Part 273.9(c)(10)(iii).

(5) The earned or unearned income of disqualified individuals as set forth in 904 KAR 3:035, Section 5(3).

(6) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(7) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; *strike pay;* old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(8) *Wages earned by a household member which are garnisheed or* [Monies which are legally obligated and otherwise payable to the household, but which are] diverted by [the provider of the payment] *an employer and paid* to a third party for a household expense.

(9) Support or alimony payments made directly to the household from nonhousehold members.

(10) *Such portion of* scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like *which are not excludable under Section 3(6) of this regulation* [in excess of amounts excluded].

(11) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(12) Monies withdrawn or dividends which are or could be received from a trust fund *considered to be excludable under 7 CFR Part 273.8(e)(8)* by a household, unless otherwise exempt under the provisions set forth in 7 CFR Part 273.9(c).

(13) Effective February 1, 1983, that amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien in accordance with 7 CFR Part 273.11(h).

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money withheld from an assistance payment, earned income or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, *provided the overpayment was not excludable in accordance with 7 CFR Part 273.9(c).*

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment.

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars ($30) in a quarter.

(6) Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are used for tuition and mandatory fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped.

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half-time and who have not attained their eighteenth (18th) birthday.

(11) Money received in the form of a non-recurring lump-sum payment.

(12) The cost of producing self-employment income.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal, state, or local laws.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is *elderly or disabled as defined in 904 KAR 3:010, Section 1(9)* [sixty (60) years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act] shall have their net income compared 100 percent *of* [to] the *federal income* [Office of Management and Budget (OMB)] poverty guidelines.

(2) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the *federal income* [Office of Management and Budget (OMB)] poverty guidelines *and, effective February 1, 1983, their net income compared to 100 percent of the federal income poverty guidelines.*

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Eighteen (18) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment. This deduction shall not exceed the standard established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction alone or in combination with the dependent care deduction in subsection (3) of this section shall not exceed a fixed monthly amount established by FNS, *except that households containing an elderly or disabled member shall not have a fixed monthly amount in regards to the shelter deduction.* This fixed monthly amount shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time [as determined by FNS]. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR Part 273.9(d). The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which incur *heating/cooling* [utility] costs separate and apart from their rent or mortgage payments *in accordance with 7 CFR Part 273.9(d)(6).* If the household is not entitled to the standard or does not choose to use the standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, *excluding special diets,* in excess of thirty-five dollars ($35) per month [, excluding special diets,] incurred by any household member who meets the definition of *elderly* [aged, blind,] or disabled, as set forth in 7 CFR *Part 271.2,* [273.9(d)(3). Allowable medical costs] are those meeting the criteria set forth in 7 CFR Part 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. Uniform national resource standards of eligibility shall *be utilized* [apply to applicant households in accordance with 7 CFR 273.8]. Eligibility shall be denied or terminated if the total value of *a household's* [the] liquid and non-liquid [household's] resources, *not exempt under Section 7 of this regulation and in accordance with 7 CFR Part 273.8,* exceed:

(1) $3000: for all households with two (2) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $1500: for all other households.

(3) Effective June 1, 1983, households in which all members receive AFDC benefits and whose gross income does not exceed 130 percent of the federal income poverty guidelines shall be considered as having met the food stamp resource requirement.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds *(except that effective February 1, 1983, Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt),* and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

(3) Licensed/unlicensed vehicles as specified in 7 CFR Part 273.8.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member, *in accordance with 7 CFR Part 273.8(e)(5).*

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of

the Interior's Bureau of Indian Affairs; and
(11) Resources which are excluded for food stamp purposes by express provision of federal statute.

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 9. Non-financial Criteria. Non-financial eligibility standards apply equally to all households and consist of:
(1) Residency. A household must live in the county in which they make application;
(2) Identity. Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;
(3) Citizenship *and* [or eligible] alien status. [A] Program participation shall be limited to either [a] citizens of the United States or eligible aliens, as outlined in 7 CFR Part 273.4. *Effective April 1, 1983, individuals whose status is questionable shall be ineligible to participate until such status has been verified;*
(4) Household size. Size of household will be verified through readily available documentary evidence or through a collateral contract; and
(5) Students. Persons aged eighteen (18) to sixty (60) who are physically and mentally fit and enrolled at least half-time in an instituion of higher education are ineligible to participate unless they meet criteria specified in 7 CFR Part 273.5.
(6) Mandatory monthly reporting (MMR). Effective April 1, 1983, housholds in counties in which MMR is being phased in shall be required to file monthly reports as a condition of eligibility, unless otherwise exempt under criteria set forth at 7 CFR Part 273.21(b)(2).
(7) Social security number (SSN). Effective February 1, 1983, households applying for or participating in the Food Stamp Program must comply with SSN requirements, specified in the Income Tax Reform Act of 1976, by providing the SSN of each household member or applying for one (1) prior to certification. Failure to comply shall be determined for each household member in accordance with 7 CFR Part 273.6(c).
(8) [(5)] Work registration. All household members between the ages of eighteen (18) and sixty (60), except those exempt in 7 CFR Part 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR Part 273.7. *Effective January 1, 1983, strikers whose households are eligible in accordance with 904 KAR 3:035, Section 5(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.*

JOHN CUBINE, Commissioner
ADOPTED: February 10, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: February 25, 1983 at 2:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:030E. Application process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: February 25, 1983
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This regulation sets forth the application process used by the *cabinet* [department] in the administration of the Food Stamp Program.

Section 1. Application Process. The application process consists of filing and completing an application, an interview and required verification and documentation. The *cabinet* [department] shall make applications readily accessible to households as well as groups and organizations involved in program information activities and shall provide an application form to anyone upon request.

Section 2. Prompt Action on Applications. The *cabinet* [department] shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible but not later than thirty (30) days after the application is filed. The *department* [bureau] shall notify the household of any action it must take to complete the application process. If verification is lacking, the household will have up to thirty (30) days from the date the missing verification was requested to provide such verification.

Section 3. Expedited Service. [(1)] The *cabinet* [department] shall identify households eligible for expedited service at the time the household requests assistance *and shall comply with 7 CFR Parts 273.2(i)(3) and 273.2(i)(4) when expediting certification and issuance procedures.* [If otherwise eligible,]
(1) Prior to February 1, 1983 the following households, *if otherwise eligible,* are entitled to expedited service:
(a) Households with zero net monthly income as computed in 7 CFR Part 273.10.
(b) Households who are destitute as defined in 7 CFR Part 273.10(e)(3).
(2) Effective February 1, 1983, the following households, if otherwise eligible and provided their liquid resources do not exceed $100, are entitled to expedited service:
(a) Households with less than $150 in monthly gross income computed in accordance with 7 CFR Part 273.10; or
(b) Migrant or seasonable farmworker households who are destitute as defined in 7 CFR Part 273.10(e)(3).
[(2)The department shall comply with 7 CFR Parts 273.2(i)(3) and 273.2(i)(4) when expediting certification and issuance procedures.]

Section 4. Public Assistance Application Process. Households in which all members are applying for public assistance (PA) and state administered general assistance shall be allowed to simultaneously apply for food stamp benefits. The *cabinet* [department] shall comply with pro-

cedures specified in 7 CFR 273.2(j) in handling PA households.

Section 5. Joint SSI/FS Application Process. Households in which all members are applicants/recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office. The *cabinet* [department] will comply with procedures specified in 7 CFR 273.2(k) in processing these households.

JOHN CUBINE, Commissioner
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CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:035E. Certification process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: February 25, 1983
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. Eligibility and benefit levels shall be determined by the cabinet by considering the households circumstances for the entire month(s) for which each household is certified. Procedures specified in 7 CFR Parts 273.3, 273.10(a), 273.10(b), 273.10(c), 273.10(d) and 273.10(e) shall be used to determine eligibility and calculate net income and benefit levels. *The criteria set forth in this section shall be applicable to all households. In addition, certain households require special/additional certification procedures as specified in Section 5 of this regulation.*

Section 2. Certification Periods. The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification. Certification periods for non-public assistance households shall be in accordance with those specified in 7 CFR Part 273.10(f)(3)(4)(5)(6). Households in which all members are included in a PA grant shall be certified for one (1) year, except that the food stamp case shall be recertified at the same time they are redetermined for PA.

Section 3. Certification Notices to Households. The cabinet shall provide applicants with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility.
(2) Notice of denial.
(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process applications for recertification in accordance with 7 CFR Part 273.10(g)(2) and Part 273.14.

Section 5. Certification Process for Specific Households. The following households have circumstances that are substantially different from other households and therefore require special*/additional* certification procedures:

(1) Households with self-employed members shall have their cases processed in accordance with 7 CFR Part 273.11(a).

(2) Households with boarders shall have their case processed in accordance with 7 CFR Part 273.11(b).

(3) Households with members which have been disqualified from program participation due to fraud or failure to provide a Social Security number, or *because they are* [for being an] ineligible aliens *or, effective April 1, 1983, because they have not verified their citizenship or alien status prior to certification* shall have their case processed in accordance with 7 CFR Part 273.11(c).

(4) Households with other non-household members will be processed in accordance with 7 CFR Part 273.11(d).

(5) Residents of drug/alcoholic treatment and rehabilitation programs shall have their case processed in accordance with 7 CFR Part 273.11(e).

(6) Residents of group living arrangements who are blind or disabled receive benefits under Title II or Title XVI of the Social Security Act shall have their case processed in accordance with 7 CFR Part 273(f), which allows residents to apply in their own behalf or through the use of an authorized/certified facility's authorized representative.

(7) Residents of shelters for battered women and children shall have their case processed in accordance with 7 CFR 273.11(g).

(8) Households consisting only of Supplemental Security Income (SSI) applicants or recipients shall have their case processed in accordance with 7 CFR 273.2(k).

(9) Households with a member who is on strike shall have their case processed in accordance with 7 CFR 273.1(g).

(10) Households requesting replacement allotments shall be processed in accordance with 7 CFR 273.11(h), 274.2(h) and 274.3(c).

(11) Student households or households containing a member(s) who is a student shall have their case processed in accordance with 7 CFR Part 273.5.

(12) Effective February 1, 1983, households containing a sponsored alien(s) shall have their case processed in accordance with 7 CFR Part 273.11(h).

(13) Households residing in a county which is phasing in mandatory monthly reporting effective April 1, 1983 and which are required to report monthly, shall have their case processed in accordance with 7 CFR Part 273.21 with selected options as follows:

(a) A two (2) month system will be used whereby the issuance month is the second month following its corresponding budget month.

(b) Eligibility shall be determined by considering all factors of eligibility prospectively for each of the issuance months.

(c) Actual earned and unearned income received in the corresponding budget month shall be considered.

(d) Consider the PA grant to be issued in the corresponding budget month.

(e) Counties will terminate cases in accordance with 7 CFR Part 273.21(m) or will suspend in accordance with 7 CFR Part 273.21(n).

(f) Households shall be recertified using the recertification form and a monthly report will not be required for that month.

(g) All households specified in 7 CFR Part 273.21(b)(2) shall be excluded from mandatory monthly reporting.

Section 6. Reporting Changes. Certified households are required to report those changes in household circumstances specified in 7 CFR Part 273.12(a) within ten (10) days of the date the change becomes known to the household. An applying household shall report all changes related to its food stamp elibility and benefits at the certification interview, or for changes occurring after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice. The cabinet shall act on reported changes in accordance with 7 CFR Part 273.12(c). The cabinet shall comply with other change reporting provisions outlined in 7 CFR Part 273.12. *Households participating in a county which is phasing in mandatory monthly reporting and which are required to report monthly, effective April 1, 1983, shall not be required to submit any reports of changes other than the monthly reports required under Section 5(13) of this regulation.*

JOHN CUBINE, Commissioner
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RECEIVED BY LRC: February 25, 1983 at 2:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:045E. Coupon issuance procedures.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: February 25, 1983
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth coupon issuance procedures used by the *cabinet* [department] in the administration of the Food Stamp Program.

Section 1. Basic Issuance Requirements. The *cabinet* [department] is responsible for the timely and accurate issuance of coupons to eligible households. In issuing coupons the *cabinet* [department] must insure that:

(1) Only certified households receive benefits;

(2) Coupons are accepted, stored, and protected after delivery to receiving points within the state;

(3) Program benefits are distributed in the correct amounts; and

(4) Coupon issuance and reconciliation activities are properly conducted in accordance with 7 CFR Parts 274.5 and 274.6 and accurately reported to the Food and Nutrition Service.

Section 2. Issuance System. The *cabinet* [department] shall choose one (1) of the following systems to issue coupons to eligible households:

(1) Direct delivery is a system wherein eligible households pick up and redeem their ATP card at a specified issuance center. Regular mail issuance shall be available to those households which are unable to get to their assigned issuance centers, as determined by the *cabinet* [department].

(2) Direct mail is a system wherein coupons are mailed, using at least first class mail, directly to the eligible household.

(3) Alternate issuance is a system used, in accordance with 7 CFR 274.3(c)(3), when circumstances exist which indicate a household may not receive their benefits through the normal issuance system.

(a) Local office pickup is a system whereby a household's benefits are mailed to the local office for the household to pick up.

(b) Certified mail is a system whereby benefits are sent via the postal system and must be signed for before they are obtained.

(c) As determined by the *cabinet* [department], other issuance systems may be utilized to ensure receipt of benefits by the eligible household.

Section 3. Issuance Cycles. (1) For ongoing cases the monthly coupon packet/ATP card is mailed to the household/issuance center over the first ten (10) to twenty (20) days of the issuance month, based on the last digit of the recipient's social security number.

(2) New approvals, reapprovals and current month recertifications shall have their coupon packet/ATP card mailed to their home/issuance center within thirty (30) days after the date of application.

(a) Households eligible for expedited service shall have their coupon packet/ATP card *mailed or* made available *for pick-up* no later than *the close of business on the fifth calendar day* [three (3) days] after the date of application.

(b) Residents of drug addiction/alcoholic treatment centers and group living arrangement facilities eligible for expedited service shall have their coupon packet/ATP card made available no later than seven (7) days after the date of application.

Section 4. Replacement Issuances. A total of only two (2) replacements of any kind shall be made during a six (6) month period, except as specified in subsection 4 of this section. Replacements will be issued in accordance with 7 CFR Parts 273.11(g), 274.2(h) and 274.3(c) as follows:

(1) Non-receipt of coupons/ATP cards must be reported in the period of intended use. Replacements shall be issued no more than ten (10) days after report of non-delivery is received and shall be limited to two (2) times during a six (6) month period. If coupons/ATP cards were returned to central office, non-receipt did not occur and the limit stated above does not apply.

(2) Destruction, in an individual household disaster, of coupons/ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be

limited to one (1) time during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(3) Theft of ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period.

(4) Improperly manufactured or mutilated coupons shall be replaced with an amount equal to the affected coupons in accordance with 7 CFR Part 273.11(g)(5). There is no limit on the number of times this type of replacement may be made.

(5) Food purchased with food stamps which is subsequently destroyed in an individual disaster, as well as in a natural disaster affecting more than one (1) household, which affects the participating household, may be eligible for replacement of the actual value of loss, not to exceed one (1) month's food stamp allotment. The disaster must be reported within ten (10) days and verified. A replacement shall be issued or the opportunity to obtain a replacement given within ten (10) days of the reported loss and shall be limited to two (2) times during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

Section 5. Authorization-to-Participate Card. The ATP card is used in areas participating in a direct delivery system.

(1) The ATP card shall be valid for the entire month of issuance unless it is issued after the twenty-fifth (25th) day of the month. Those issued after that date are valid through the last day of the following month.

(2) The household shall be provided with a means of designating an emergency authorized representative who can transact the ATP card in their stead.

Section 6. Coupon Controls. Regardless of which issuance system is used, the *cabinet* [department] shall:

(1) Establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with 7 CFR Parts 274.4(a)1 and 2;

(2) Establish control and security procedures to safeguard coupons similar to those used to protect currency outlined in 7 CFR Part 274.4(b);

(3) Arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment in accordance with 7 CFR Part 274.4(c);

(4) Ensure that coupon issuers and bulk storage points promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control and storage of coupons pursuant to 7 CFR Part 274.5;

(5) Maintain issuance records for a period of three (3) years from the month of origin as outlined in 7 CFR Part 274.7;

(6) Control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency in accordance with 7 CFR Part 274.7(b); and

(7) Provide security and control for all issuance accountability documents pursuant to 7 CFR Part 274.7(c).

JOHN CUBINE, Commissioner
ADOPTED: February 10, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: February 25, 1983 at 2:30 p.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

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

401 KAR 5:050. Definitions and general provisions; KPDES permitting program.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.005, *224.020,* 224.033(19), (21), (22), (23), 224.034, 224.060
NECESSITY AND FUNCTION: KRS Chapter 224 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into the waters of the Commonwealth. KRS 224.034 empowers the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.). Permits issued pursuant to KRS *224.034* [224.004] shall be referred to as KPDES permits. This regulation defines essential terms used in connection with the following KPDES regulations: 401 KAR 5:050; 401 KAR 5:055; 401 KAR 5:060; 401 KAR 5:065; 401 KAR 5:070; 401 KAR 5:075; 401 KAR 5:080; and 401 KAR 5:085.

Section 1. Definitions. Whenever used in the KPDES regulations, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these regulations, the following terms have the meaning as set forth herein. Terms not further defined in this section have the meaning given by KRS 224.005 and regulations promulgated pursuant thereto.

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(3) "Application" means the forms approved by the cabinet, which are equivalent to the EPA standard NPDES forms for applying for a KPDES permit, including any additions, revisions or modifications to the forms.

(4) "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.

(5) "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.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also includes treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(7) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(8) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(9) "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.

(10) "Date of program approval" means the effective date of the administrator's approval of Kentucky's KPDES regulatory program under Section 402 of CWA.

(11) "Direct discharge" means the discharge of a pollutant *into waters of the Commonwealth when such discharge is not included under the definition of "indirect discharger."*

(12) "Director" means the secretary of the cabinet, or an authorized representative. For purposes of permit issuance decisions, the director is the director of the Division of Water, in the Department for Environmental Protection.

(13) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This defintion includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface runoff which is collected or channelled by man; 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.

(14) "Discharge monitoring report (DMR)" means the cabinet's form including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees.

(15) "Draft permit" means a document prepared under 401 KAR *5:075* [5:065], Section 3, indicating the director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as provided in 401 KAR *5:075* [5:065], Section 2, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as provided in 401 KAR *5:075* [5:065], Section 2, is not a draft permit. A proposed permit is not a draft permit.

(16) "Effluent limitation" means any restriction imposed by the director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(17) "Effluent limitations guidelines" means a regulation published by the administrator under Section 304(b) of CWA (33 U.S.C. Section 1314(b)) to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(19) "Facility or activity" means any KPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(20) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(23) "Kentucky Pollutant Discharge Elimination System (KPDES)" means the Kentucky program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements. The KPDES regulations are: 401 KAR 5:050, 401 KAR 5:055, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, 401 KAR 5:080 and 401 KAR 5:085.

(24) "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(25) "Major facility" means any KPDES facility or activity classified as such by the director in cooperation with the regional adminstrator*; designation as a "major industry," as set forth in 401 KAR 5:085, Section 2, does not indicate automatic classification as a major facility.*

(26) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(27) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage,

industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of CWA (33 U.S.C. 1258).

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(29) "New discharger" means any building, structure, facility or installation:

(a) 1. From which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972 it had never discharged pollutants; and

2. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

3. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into waters of the Commonwealth. It also includes any existing mobile point source that begins discharging at a location for which it does not have an existing permit.

(30) "New source" means 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) After promulgation of EPA's standards of performance *or pretreatment standards* which are applicable to such source; or

(b) After proposal of EPA's standards of performance *or pretreatment standards* which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the KPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the cabinet *or U.S. EPA* to implement the requirements of the KPDES *or NPDES* regulations. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(35) "Pollutant" means as defined in KRS 224.005(28) *including filter backwash, munitions and cellar dirt,* except:

(a) Radioactive materials which are regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);

(b) Sewage from vessels; or

(c) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the appropriate state agency and if the state agency determines that the injection or disposal will not violate any applicable law or regulation.

(36) "Primary industry category" means any industry category listed in Section 10 of 401 KAR 5:060.

(37) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(38) "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, byproduct, or waste product.

(39) "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(40) "Publicly owned treatment works (POTW)" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. *For purposes of pretreatment in 401 KAR 5:055, Section 9, POTW includes a municipality having jurisdiction over the indirect discharges to and discharges from the treatment works.*

(41) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(42) "Regional administrator" means the regional administrator of the Region IV office of the EPA or the authorized representative of the regional administrator.

(43) "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 regulations promulgated pursuant thereto.

(44) "Secondary industry category" means any industry category which is not a primary industry category.

(45) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA (33 U.S.C Section 1324).

(46) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(47) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(48) "Total dissolved solids *(TDS)*" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

(49) "Toxic pollutant" means any pollutant listed as toxic in 401 KAR *5:080* [5:060], Section *5* [14].

(50) "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; "grab sample" means a single effluent portion which is not a twenty-four (24) hour composite sample.

(51) "Underground injection" means a "well injection."

(52) [(50)] "Variance" means any mechanism or provi-

sion under the KPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(53) [(51)] "Waters of the Commonwealth" means as defined in KRS 224.005(26) [, except groundwater].

(54) "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(55) "Well injection" means the subsurface implacement 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.

(56) [(52)] "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section 2. Compatibility With the CWA. The KPDES regulations promulgated pursuant to KRS Chapter 224 are intended to be compatible with the federal regulations adopted pursuant to CWA.

Section 3. Conflicting Provisions. The provisions of the KPDES regulations are to be construed as being compatible with and complimentary to each other. In the event that any of these regulations are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

Section 4. Severability. In the event that any provision of KRS Chapter 224 or any regulation promulgated pursuant thereto is found to be invalid by a court of competent jurisdiction, the remaining KPDES regulations shall not be affected or diminished thereby.

Section 5. Abbreviations and Acronyms. The following abbreviations and acronyms, as used throughout the KPDES regulations, shall have the meaining given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT' means best conventional pollutant control technology;

(3) 'BOD" means biochemical oxygen demand;

(4) "BPT" means best practicable technology currently available;

(5) "BMPs" means best management practices;

(6) "COD" means chemcial oxygen demand;

(7) "CFR" means code of federal regulation, as subsequently amended;

(8) "DMR" means discharge monitoring report;

(9) "KAR" means Kentucky Administrative Regulation;

(10) "KPDES" means Kentucky Pollutant Discharge Elimination System;

(11) "KRS" means Kentucky Revised Statutes;

(12) "NPDES" means National Pollutant Discharge Elimination System;

(13) "POTW" means publicly owned treatment works;

(14) "SIC" means standard industrial classification; and

(15) "TSS" means total suspended solids.

Section 6. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:055. Scope and applicability of the KPDES program.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082,224.033(19), (21), (22), (23), 224.034, 224.060, 224.994(1), (4)

NECESSITY AND FUNCTION: KRS 224.033(21) provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by regulation, technological levels of treatment and effluent limitations. KRS 224.034(1) provides that the cabinet 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 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d), KRS 224.034(1) requires that any exemptions granted in the issuance of such permits shall be pursuant to 33 U.S.C. Sections 1311, 1312 and 1326(a). Further, KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this regulation any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, and requirements for disposal into wells, into POTWS and by land application.

Section 1. Applicability of the KPDES Requirements. The KPDES program requires permits for the discharge of pollutants from any point source into waters of the Commonwealth.

(1) Specific inclusions. The following are *examples of specific categories of* point sources requiring KPDES permits for discharges. These terms are further defined in 401 KAR 5:060, Sections 5 through 12.

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Discharges from separate storm sewers; and

(e) Silviculture point sources.

(2) Specific exclusions. The following discharges do not require KPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and

galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured in waters of the Commonwealth for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under Section 404 of CWA (33 U.S.C. Section 1314).

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated. [A KPDES permit is required for the introduction of pollutants to privately owned treatment works or to other discharges through, pipes, sewers, or other conveyances owned by the Commonwealth of Kentucky, a municipality, or other party not leading to treatment works.]

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances) or discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.877(5).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges form concentrated animal feeding operations as defined in Section 5 of 401 KAR 5:060, discharges from concentrated aquatic animal production facilities as defined in Section 6 of 401 KAR 5:060, discharges to aquaculture projects as defined in Section 7 of 401 KAR 5:060, and discharges from silvicultural point sources as defined in Section 9 of 401 KAR 5:060.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the director 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 and which are issued under other permitting programs.

Section 2. Prohibitions. No permit may be issued *by the director*: (1) When the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or regulations promulgated pursuant thereto;

(2) *When* [By the director where] the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.75;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

(4) When, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any 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;

(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 regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, must 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 [compliance] schedules *of compliance* designed to bring the segment into compliance with Kentucky water quality standards.

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 any of 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 made by the close of the public comment period under Section 5 of 401 KAR 5:075. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for "non-conventional" pollutants, pursuant to Section *7(1)* [8(1)] of this regulation because of the economic capability of the owner or operator, or pursuant to Section *7(2)* [8(2)] of this regulation because of certain environmental considerations, must be made as follows. A completed request must be submitted no later than the close of the public comment period under Section 5 of 401 KAR 5:075 demonstrating that the applicable requirements of 401 KAR 5:080 have been met.

(3) Innovative technology. An extension under Section *7(3)* [8(3)] of this regulation from the deadline in Section 1 of 401 KAR 5:080 for best available technology (BAT), based on the use of innovative technology, may be requested no later than the close of the public comment period under Section 5 of 401 KAR 5:075 for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of [Section 3 of] 401 KAR 5:080 have been met.

[(4) Water quality related effluent limitations. A modification under Section 8(4) of this regulation for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under 401 KAR 5:075, Section 5, on the permit from which the modification is sought.]

(4) [(5)] Thermal discharges. A variance under Section *7(4)* [8(5)] of this regulation for the thermal component of any discharge must 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 may be filed by the close of the public comment period under Section 5 of 401 KAR 5:075.

[Section 4. Variance Requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable EPA effluent limitations. A modification under Section 8(4) of this regulation shall be requested no later than the close of the public comment period under Section 5 of 401 KAR 5:075 on the permit from which the modification is sought.]

Section *4.* [5.] Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section[s] 3 [and 4] of this regulation, the director may notify a permit applicant before a draft permit is issued under Section 3 of 401 KAR 5:075 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the director 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 director 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 may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under Section 3(2) of this regulation may request an extension. The extension may be granted or denied at the discretion of the director. Extensions should be no more than six (6) months in duration.

Section *5.* [6.] General Permits. (1) Coverage. The director may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA (33 U.S.C. 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. Any other appropriate division or combination of boundaries.

(b) Sources. The general permit will be written to regulate, within the area described in paragraph (a) of this subsection; either:

1. Separate storm sewers; or
2. A category of point sources other than separate storm sewers if the sources all:

a. Involve the same or substantially similar types of operations;
b. Discharge the same types of wastes;
c. Require the same effluent limitations or operating conditions;
d. Require the same or similar monitoring; and
e. In the opinion of the director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of 401 KAR 5:075.

(b) Requiring an individual permit.

1. The director may require any person authorized by a general permit to apply for and obtain an individual KPDES permit. Any interested person may petition the director to take action under this paragraph. Cases where an individual KPDES permit may be required include the following:

a. The discharger(s) is a significant contributor of pollution as determined by the factors set forth in Section 8(3)(b) of 401 KAR 5:060;
b. The discharger is not in compliance with the conditions of the general KPDES permit;
(c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
d. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;
e. A Kentucky Water Quality Management Plan containing requirements applicable to such point sources is approved; or
f. The requirements of subsection (1) of this section are not met.

2. Any owner or operator authorized by a general permit may request to the 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 director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

3. When an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically terminated on the effective date of the individual permit.

4. A permittee, excluded from a general permit solely because he 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.* [7.] Disposal of Pollutants into Wells, into POTWs or by Land Application. *(1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.*

(2) [(1)] When 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 permit shall be adjusted to reflect the reduced raw waste resulting from such 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 may 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) [(2)] Subsection *(2)* [(1)] 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) [(3)] Subsection *(2)* [(1)] of this section does not alter a discharger's obligation to meet any more stringent requirements established under 401 KAR 5:065.

Section 7. [8.] Variances Available to KPDES Applicants. *Consistent with KRS 224.034(1), the variance provisions in this section and in Sections 3 and 4 of 401 KAR 5:080 lists, inclusively, those variances available to KPDES applicants.*

(1) Economic capability. The director, 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 director 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 director, 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 Section *5* [6] of 401 KAR 5:080, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the director that:

1. The modified requirement will result, at a minimum, in compliance with the BPT requirement identified in 401 KAR 5:080 or Kentucky water quality standards, whichever is applicable;

2. The modified requirement will not result in *any* [an] additional requirement on any other point or non-source point; and

3. The modification will not:

a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; and

b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities.

(b) If an owner or operator of a point source applies for a modification under this section for any pollutant, that owner or operator will 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 director may establish a date for complying with the deadline for achieving BAT set out in Section 1 of 401 KAR 5:080 no later than July 1, 1987, if the owner or operator establishes to the satisfaction of the director 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 director to be economically achievable.

(b) The innovative system must have the potential for industrywide application.

(c) The director may 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 *5* [6].

[(4) Water quality related effluent limitations. The director may modify water quality related effluent limitations, promulgated to assure protection of specific portions of waters of the Commonwealth, which are established in addition to effluent limitations for achieving BAT, if the following conditions are met:]

[(a) The person affected by such limitation demonstrates that there is no reasonable relationship between the economic and social costs of the effluent limitation and the benefits to be obtained; and]

[(b) The request for modification is made no later than the close of the public comment period under 401 KAR 5:075, Section 5, on the permit from which the modification is sought.]

(4) [(5)] Thermal pollution.

(a) The director 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 director that the original effluent limitation proposed by the director 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 director upon request by the owner or operator will take into account the interaction of the thermal component with other pollutants, and will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water.

Section 8. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors. (1) Definitions. "Requester" means an industrial user or a POTW seeking a variance from the limits specified in a categorical pretreatment standard.

(2) The criteria and standards for evaluating a request for a fundamentally different factors variance shall be pursuant to 401 KAR 5:080, Section 3.

(3) Application procedure.

(a) Application deadline.

1. Requests for a variance and supporting information must be submitted in writing to the director.

2. In order to be considered, request for variances must be submitted within 180 days after the effective date of the categorical pretreatment standard unless the user has requested a categorical determination.

3. When the user has requested a categorical determination the user may elect to await the results of the category determination before submitting a variance request under this section. When the user so elects, the user must submit the variance request within thirty (30) days after a final decision has been made on the categorical determination.

(b) Contents of submission. Written submissions for variance request shall include:

1. The name and address of the requester;

2. Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;

3. Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are regulated;

4. Identification of the categorical pretreatment standards which are applicable to the industrial user;

5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

6. The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in subparagraph 5 of this paragraph;

7. A description of the industrial user's existing water pollution control facilities;

8. A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and

9. A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.

(c) Deficient requests. The director will only act on written requests for variances that contain all of the information required. Requesters who have made incomplete submissions will be notified by the director that their requests are deficient and unless the time period is extended, will be given up to thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the director, the request for a variance shall be denied.

(d) Public notice. Upon receipt of a complete request, the director will provide notice of receipt, opportunity to review the submission, and apportunity to comment.

1. The public notice will be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice will include mailing notices to:

a. The POTW into which the industrial user discharges;

b. Adjoining states whose waters may be affected; and

c. Designated CWA Section 208 (33 U.S.C. Section 1288) planning agencies, federal and state fish, shellfish and wildlife resource agencies, and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

2. The public notice will provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

3. Following the comment period, the director will make a determination on the request taking into consideration any comments received. Notice of this final decision will be provided to the requester and all persons who submitted comments on the request.

(e) Review of requests by state.

1. When the director finds that fundamentally different factors do not exist, the director may deny the request, and notify the requester of the denial.

2. When the director finds that fundamentally different factors do exist the director will forward the request, with a recommendation that the request be approved, to the enforcement division director of EPA region IV.

Section 9. Pretreatment. (1) Applicability.

(a) This section applies to the following:

1. Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

2. POTWs which receive wastewater from sources subject to national pretreatment standards; and

3. Any new or existing source subject to national pretreatment standards.

(b) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

(2) Definitions. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards under the KPDES program.

(a) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in subsection (8) of this section and which has been approved by the director in accordance with subsection (9) of this section.

(b) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated by the KPDES program.

(c) "Industrial user" or "user" means a source of indirect discharge.

(d) "Interference" means an inhibition or disruption of the POTWs, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or to the prevention of sewage sludge use or disposal by the POTW in violation of any applicable regulation. An industrial use significantly contributes to a permit violation or prevention of sludge use or disposal whenever the user:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;

2. Discharges wastewater which substantially differs in nature or constitutents from the user's average discharge; or

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the POTW's approved method of sludge management.

(e) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the CWA (33 U.S.C. Section 1317(b) and (c)) which applies to industrial users. This includes prohibitive discharge limits established pursuant to subsection (4) of this section.

(f) "Pass through" means the discharge of pollutants through the POTW into waters of the Commonwealth in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation. An industrial user significantly contributes to such permit violation when it:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;

2. Discharge wastewater which substantially differs in nature and constituents from the user's average discharge;

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a permit violation; or

4. Knows or has reason to know that the POTW is, for any reason, violating its final effluent limitations in its permit and that such industrial user's discharge either alone or in conjunction with discharges from other sources, increases the magnitude or duration of the POTW's violations.

(g) "POTW treatment plan" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(h) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such 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 this section.

(i) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

(3) Local law. Nothing in this regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the cabinet or by EPA.

(4) National pretreatment standards: prohibited discharges.

(a) A non-domestic source introducing pollutants into a POTW shall comply with the general and specific prohibitions set forth in 40 CFR 403.5.

(b) A POTW developing a pretreatment program pursuant to subsection (7) of this section shall develop and enforce effluent limits to implement the prohibitions of paragraph (a) of this subsection pursuant to 40 CFR 403.5.

(c) A POTW without an approved pretreatment program shall, in cases where pollutants contributed by users result in interference or pass-through, and such violation is likely to recur, develop and enforcement specific effluent limits pursuant to 40 CFR 403.5.

(d) If, within thirty (30) days after notice of an interference violation has been sent by the cabinet to the POTW and to persons who have requested notice, the POTW fails to begin appropriate enforcement action, the cabinet may take appropriate enforcement action, pursuant to KRS 224.994 and 224.995.

(e) 40 CFR 403.5 is hereby incorporated by reference, revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) Pretreatment standards: categorical standards.

(a) In addition to the general prohibitions in subsection (4) of this section, all indirect discharges shall comply with national pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(b) Industrial users may request the director to provide written certification on whether an industrial user falls within a praticular subcategory. The director will act upon that request in accordance with the procedures in 40 CFR 403.6.

(c) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6(c) through (e).

(d) 40 CFR Chapter I, Subchapter N, and 40 CFR 403.6 are hereby incorporated by reference, revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Division of Water, Permits Branch, Frankfort, Kentucky.

(6) Revision of categorical pretreatment standards to reflect POTW removal of pollutants. This subsection provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW.

(a) Definitions. For the purpose of this subsection:

1. "Removal" means 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 can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities, or it may be incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW. The demonstration of removal shall consist of data which reflect the removal achieved by the POTW for those specific pollutants of concern included on the list developed pursuant to Section 307(a) of the CWA (33 U.S.C. Section 1317(a)). Each categorical pretreatment standard will specify whether or not a removal allowance may be granted for indicator or surrogate pollutants regulated in that standard.

2. "Consistent removal" means the average of the lowest fifty (50) percent of the removals measured ac-

cording to paragraph (d)2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in that paragraph shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject ot approval by the director. If the substance is not measurable in the influent, the data may not be used. When the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal.

3. "Measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

4. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(b) Revision of categorical pretreatment standards to reflect POTW pollutant removal. A POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, pursuant to this subsection, revise the discharge limits for a specific pollutant covered in the categorical pretreatment standard applicable to that user. Revisions shall only be made when the POTW demonstrates consistent removal of each pollutant for which the discharge limit in a categorical pretreatment standard is to be revised at a level which justifies the amount of revision to the discharge limit. In addition, revision of pollutant discharge limits in categorical pretreatment standards by a POTW may only be made as follows:

1. Application. The POTW shall apply for, and receive authorization from the director in accordance with subsections (8) and (9) of this section;

2. POTW pretreatment program. The POTW shall have a pretreatment program approved in accordance with subsections (7), (8) and (9) of this section. However, a POTW may conditionally revise the discharge limits for specific pollutants, even though a pretreatment program has not been approved, as follows. These provisions also govern the issuance of provisional authorizations under paragraph (d)2g of this subsection;

a. An industrial user wishing to receive a conditional or provisional revision of categorical pretreatment standards shall submit to the POTW the information required in subsection (10)(b)1 through 7 of this section, except that the compliance schedule is not required when a provisional allowance is requested. The submission shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standards as revised by the POTW.

b. The POTW shall compile and submit data demonstrating removal in accordance with the requirements of paragraphs (d)1 through 7 of this subsection. The POTW shall submit to the director a removal report which comports with the signatory and certification requirements of subsection (10)(l) and (m) of this section. This report shall contain a certification by any of the persons specified in subsection (10)(l) of this section or by an independent engineer, containing the following statement: "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of Section 9(6)(d) of this regulation. Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

c. The POTW shall submit to the director an application for pretreatment program approval meeting the requirements of subsections (7) and (8)(a) or (b) of this section in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's KPDES permit.

d. If a POTW grants a conditional or provisional revision and the director subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions in paragraphs (b)2a or b of this subsection, or that its sludge use or disposal practices are not in compliance with the provisions of paragraph (b)4 of this subsection, the revision shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard as specified by the director. However, the revision will not be terminated when the POTW has not made a timely application for program approval if the POTW has made demonstrable progress towards and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed one (1) year, established by the director.

e. If a POTW grants a conditional or provisional revision and the POTW or director subsequently makes a final determination after notice and an opportunity for a hearing, that the industrial user failed to comply with conditions in paragraph (b)1d of this subsection, including in the case of a conditional revision, the dates specified in the compliance schedule required by subsection (10)(b)7 of this section, the revision shall be terminated by the POTW or the director for the noncomplying industrial user and each noncomplying industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within the time period specified in that standard. The revision will not be terminated when a violation of the provisions of this subparagraph results from causes entirely outside the control of the industrial user or the industrial user has demonstrated substantial compliance.

f. The POTW shall submit to the director by December 31 of each year the name and address of each industrial user that has received a conditionally or provisionally revised discharge limit. If the revised discharge limit is revoked, the POTW shall submit the information in paragraph (b)2a of this subsection to the director.

3. Compensation for overflow. POTW's which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subparagraph a or b of this paragraph. However, this paragraph will not apply when an industrial user can demonstrate that overflow does not occur between the industrial user and the POTW treatment plant.

a. Consistent removal may be claimed if the industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or pretreatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted when the POTW submits to the director evidence that:

(i) All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in paragraph (b)3a(iii) of this subsection to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

(iii) All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available upon request by the POTW, director or regional administrator daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

b. (i) Consistent removal may be claimed if reduced pursuant to the following equation:

$$r_c = r_m = \frac{8760\text{-}Z}{8760}$$

Where:

r_m = POTW's consistent removal rate for that pollutant as established under paragraphs (a)1 and (d)2 of this subsection.

r_c = removal corrected by the overflow factor.

Z = hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

(ii) After July 1, 1983, consistent removal may be claimed only when efforts to correct the conditions resulting in untreated discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" (Program Guidance Memorandum-61) published on December 16, 1975 by EPA Office of Water Program Operations (WH-546). Revisions to discharge limits in categorical pretreatment standards may not be made when efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, by July 1, 1983, the POTW shall have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the director may continue to be claimed according to the formula in paragraph (b)3b(i) of this subsection as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and as long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective overflow controls identified in the analysis should federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the director, continue to be claimed according to the formula in paragraph (b)3b(i) of this subsection when the POTW has completed and the director has accepted the analysis required by PRM 75-34, and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. In considering what is timely implementation, the director will consider the availability of funds, cost of control measures and seriousness of the water quality problem.

4. Compliance with applicable sludge requirements. A revision shall not contribute to the POTW's inability to comply with its KPDES permit or with any applicable statutes or regulations pertaining to sludge management.

(c) POTW application for authorization to revise discharge limits.

1. An application for authorization to revise discharge limits for industrial users who are or in the future may be subject to categorical pretreatment standards, or approval of discharge limits conditionally or provisionally revised for industrial users by the POTW shall be submitted by the POTW to the director.

2. A POTW may submit an application no more than once per year for:

a. Any categorical pretreatment standard promulgated in the prior eighteen (18) months;

b. Any new or modified facilities or production changes resulting in the discharge of pollutants which were not previously discharged and which are subject to promulgated categorical standards; or

c. Any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures, such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW treatment plant.

3. The director may, however, elect not to review the application upon receipt, in which case the POTW's conditionally or provisionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of subsection (9) of this section, but in no event later than the time of any pretreatment program approval or any KPDES permit reissuance thereafter.

4. If the consistent removal claimed is based on an analytical technique other than the technique specified for the applicable categorical pretreatment standard, the director may require the POTW perform additional analyses.

(d) Contents of application to revise discharge limits.

Requests for authorization to revise discharge limits in categorical pretreatment standards shall be supported by the following information:

1. List of pollutants. The POTW shall submit a list of pollutants for which discharge limit revisions are proposed.

2. Consistent removal data. The POTW shall submit influent and effluent operational data demonstrating consistent removal, or other information provided for in paragraph (a)2 of this subsection which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data: seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

b. Representative data: quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if that data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in paragraph (a)2 of this subsection.

c. Sampling procedures: composite.

(i) The influent and effluent operational data shall be otained through twenty-four (24) hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to either stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(ii) Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling must be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(iii) Upon the director's concurrence, a POTW may utilize a historical data base amassed prior to the effective date of this subsection provided that such data otherwise meet the requirements of this subparagraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one (1) year.

(iv) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time, compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one (1) detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a twenty-four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: grab. When composite sampling is not an appropriate sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should preceed collection of effluent samples by approximately one (1) detention period. The detention period is to be based on a twenty-four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, when the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of bilogical, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding fifteen (15) minutes.

e. Analytical methods. Sampling and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director, with the concurrence of the administrator, determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director.

f. Calculation of removal. All data shall be submitted to the director. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, when such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director.

g. Exception to sampling data requirement: provisional removal demonstration. For pollutants which are not currently being discharged, application may be made by the POTW for provisional authorization to revise the applicable categorical pretreatment standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities when the quality and the quantity of influent are similar. In calculating and applying for provisional removal allowances, the POTW shall comply with the provision of paragraphs (b)1 through 4 of this subsection. Within eighteen (18) months after the commencement of discharge of the pollutants in question, consistent removal shall be demonstrated.

3. List of industrial subcategories. The POTW shall submit a list of the industrial subcategories for which discharge limits in categorical pretreatment standards will be revised, including the number of industrial users in each subcategory and an identification of which of the pollutants on the list are discharged by each subcategory.

4. Calculation or revised discharge limits. The POTW shall submit proposed revised discharge limits for each of the subcategories of industrial users calculated in the following manner:

a. The proposed revised discharge limit for a specified pollutant shall be derived by use of the following formula:

$$Y = \frac{X}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard.

r = POTW's consistent removal rate for that pollutant as established under paragraphs (a)2, (d)2, and if appropriate, (b)3b1 of this subsection (percentage expressed as a decimal).

y = revised discharge limit for the specified pollutant (expressed in same units as x).

b. In calculating revised discharge limits, the revision shall be applied equally to all existing and new industrial users in an industrial subcategory subject to categorical pretreatment standards which discharge that pollutant to the POTWs.

5. Data on sludge characteristics. The POTW shall submit data showing the concentrations and amounts in the POTW's sludge of the pollutants for which discharge limit revisions are proposed and for which EPA, the director or municipality have published sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal. These data shall meet the following requirements:

a. The data shall be obtained through a composite sample taken during the same sampling periods selected to measure consistent POTW removals in accordance with the requirements of paragraph (d)2 of this subsection. Each composite sample shall contain a minimum of twelve (12) discrete samples taken at equal time intervals over a twenty-four (24) hour period. When a composite sample is not an appropriate sampling technique, grab samples shall be taken.

b. Sampling and analysis shall be performed in accordance with the sampling and analytical techniques described previously in paragraph (d)2e of this subsection.

6. Description of sludge management. The POTW shall submit a specific description of the POTW's current methods of use or disposal of its sludge and data demonstrating that the current sludge use or disposal methods comply and will continue to comply with the requirements of paragraph (b)4 of this subsection.

7. Certification statement. The POTW shall submit the certification statement required by paragraph (b)2b of this subsection stating that the pollutant removals and associated revised discharged limits have been or will be calculated in accordance with this section and any guidelines issued by EPA under Section 304(g) of the CWA (33 U.S.C. Section 1314(g)).

(e) Procedure for authorizing modification of standards.

1. Application for authorization to revise national pretreatment standards shall comply with subsection (8) of this section and paragraphs (c) and (d) of this subsection. Notice, public comment, and review by the director will comply with subsection (9) of this section.

2. A POTW which has received a construction grant from funds authorized for any fiscal year beginning after September 30, 1978, will only be considered for authorization to modify national standards after it has completed the analysis required by Section 201(g)(5) of the CWA (33 U.S.C. Section 1288(g)(5) and demonstrated that modification of the discharge limits in national standards will not preclude the use of innovative or alternative technology. In addition, when sludge disposal or treatment technology is or will be acquired or constructed with construction grant funds, POTWs should refer to 40 CFR 35.917(d)(6) and Appendix A to determine the funding eligibility of sludge disposal or treatment facilities.

3. The director shall, at such time as it elects to review the submission, or at the time of POTW pretreatment program approval or KPDES permit reissuance thereafter, authorize the POTW to revise industrial user discharge limits, consistent with the provisions of this subsection.

4. An industrial user or other interested party may assist the POTW in preparing and presenting the information necessary to apply for authorization to revise categorical pretreatment standards.

(f) Continuation and withdrawal of authorization.

1. Monitoring and reporting of consistent removal. Following authorization to revise the discharge limits in pretreatment standards, the POTW shall continue to monitor and report on, at frequencies and over intervals specified by the director, with the concurrence of the regional administrator, but in no case less than two (2) times per year, the POTW's removal capabilities for all pollutants for which authority to revise the standards was granted. Monitoring and reporting shall be in accordance with subsection (10)(i) and (j) of this section pertaining to pollutant removal capability reports.

2. Re-evaluation of revisions. Approval of authority to revise pretreatment standards will be re-examined whenever the POTW's KPDES permit is reissued, unless the director, with the concurrence of the regional administrator determines the need to re-evaluate the authority. In order to maintain a removal allowance, the POTW shall comply with all federal, state and local statutes, regulations, and permits applicable to the POTW's selected method of sludge use or disposal. In addition, where overflows of untreated waste by the POTW continue to occur, the director, with the concurrence of the regional administrator, may condition continued authorization to revise discharge limits upon the POTW's performing additional analysis and/or implementing additional control measures as is consistent with EPA policy on POTW overflows.

3. Inclusion in POTW permit. Once authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for industrial users of the system as well as the consistent removal documented by the POTW for that pollutant and the other requirements of paragraph (b) of this subsection, shall be included in the POTW's KPDES permit upon the earliest reissuance or modification, at or following program approval, and shall become enforceable requirements of the POTW's KPDES permit.

4. Modication or withdrawal of revised limits.

a. Notice to POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)1 of this subsection or other information available to it, the director determines:

(i) That one (1) or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this subsection; or

(ii) That such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's KPDES permit. A revised discharge limit is significantly contributing to a violation of the POTW's permit if it satisfies the definitions set forth in subsection (2)(d) or (f) of this section.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director will not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied and made public in writing, the reasons for withdrawal or modification, and an opportunity is provided for a hearing. Following notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with those limits within a reasonable time not to exceed the period of time prescribed in the applicable categorical pretreatment standard as may be specified by the director.

(7) POTW pretreatment programs: development by POTW.

(a) POTWs required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program. The director may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW affluent limitations, contamination of municipal sludge, or other circumstances so warrant. In addition, a POTW desiring to modify categorical pretreatment standards for pollutants removed by the POTW pursuant to subsection (6) of this section shall have an approved pretreatment program prior to obtaining final approval of a removal allowance, unless conditional approval of a removal allowance is granted by the director pursuant to subsection (6) of this section.

(b) Deadline for program approval. A POTW which meets the criteria of this subsection will receive approval of a POTW pretreatment program no later than three (3) years after the reissuance or modification of its existing permit but in no case later than July 1, 1983.

(c) Incorporation of approved programs in permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in paragraph (b) of this subsection. The POTW's KPDES permit will be reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit.

(d) Incorporation of compliance schedules in permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three (3) years or July 1, 1983, whichever is sooner, for the approval of the legal authority, procedures and funding required by paragraph (f) of this subsection.

(e) Cause for reissuance or modification of permits. The director may modify or revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program when the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of a CWA Section 201 (33 U.S.C. Section 1281) construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate an approved POTW pretreatment program in the POTW permit; or

4. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(f) POTW pretreatment program requirements. A POTW pretreatment program shall meet the following requirements:

1. Legal authority. The POTW shall operate pursuant to enforceable legal authority, which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users when such contributions do not meet applicable pretreatment standards and requirements or when such contributions would cause the POTW to violate its permit;

b. Require compliance with applicable pretreatment standards and requirements by industrial users;

c. Control, through permit, contract, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements;

d. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements, including but not limited to the reports required in subsection (10) of this section;

e. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection (12) of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under CWA Section 308 (33 U.S.C. Section 1318);

g. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties, as authorized by law. A POTW may enter into contracts with industrial users to assure compliance by industrial users with pretreatment standards and requirements. A contract may provide for liquidated damages for violation of pretreatment standards and requirements and may include an agreement by the industrial user to submit to the remedy of specific performance for breach of contract;

h. Pretreatment requirements enforced through the remedies set forth in subparagraph g of this paragraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any

rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or this section. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedure to halt or prevent any discharge to the POTW which presents or may present danger to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the director finds to be insufficient; and

i. Comply with the confidentiality requirements set forth in subsection (11) of this section.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the director upon request;

b. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph 2a of this paragraph. This information shall be made available to the director upon request;

c. Notify industrial users identified under subparagraph 2a of this paragraph of applicable pretreatment standards and any other applicable requirements;

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements of subsection (10) of this section;

e. Randomly sample and analyze the effluent from industrial users and conduct surviellance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The results of these activities shall be made available to the director upon request;

f. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by subsection (10) of this section, or indicate by analysis, inspection, and surviellance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

g. Comply with all applicable public participation requirements. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, during the previous twelve (12) months, were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected forty-five (45) days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve (12) month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the director when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

(8) POTW pretreatment programs and authorization to revise pretreatment standards: submission for approval.

(a) Who approves program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in paragraphs (b)1 through 4 of this subsection. This description shall be submitted to the director, who will make a determination on the request for program approval in accordance with procedure described in subsection (9) of this section.

(b) Contents of POTW program submission.

1. The program submission shall contain a statement from the city attorney or a city official acting in a comparable capacity, or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in subsection (7) of this section. This statement shall:

a. Identify the provision of the legal authority under subsection (7)(f)1 of this section which provides the basis for each procedure under subsection (7)(f)2 of this section;

b. Identify the manner in which the POTW will implement the program requirements set forth in subsection (7) of this section including the means by which pretreatment standards will be applied to individual industrial users; and

c. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

2. The program submission shall contain a copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

3. The program submission shall contain a brief description, including organization charts of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

4. The program description shall contain a description of the funding levels and full and part-time manpower available to implement the program.

(c) Conditional POTW program approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of paragraph (b) of this subsection except that the requirements of paragraph (b) of this subsection may be relaxed if the submission demonstrates that:

1. A limited aspect of the program does not need to be implemented immediately;

2. The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism

by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(d) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in subsection (6)(d) of this section.

(e) Approval authority action. A POTW requesting POTW pretreatment program appproval shall submit to the director three (3) copies of the submission described in paragraph (b) of this subsection. Upon a preliminary determination that the submission meets the requirements of paragraph (b) of this subsection the director will:

1. Notify the POTW that the submission has been received and is under review; and

2. Commence the public notice and evaluation activities set forth in subsection (9) of this section.

(f) Notification where submission is defective. If after review of the submission as provided for in paragraph (c) of this subsection, the director determines that the submission does not comply with the requirements of paragraphs (b) or (c) and, if appropriate, (d) of this subsection, the director will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise of the means by which the POTW can comply with the applicable requirements of paragraphs (b) and (c) and, if appropriate, (d) of this subsection.

(g) Consistency with water quality management plans.

1. In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130 and 131, when the CWA Section 208 (33 U.S.C. Section 1288) plan includes management agency designations and addresses pretreatment in a manner consistent with this section. In order to assure such consistency the director will solicit the review and comment of the appropriate CWA Section 208 planning agency during the public comment period provided for in subsection (9) of this section prior to approval or disapproval of the program.

2. When no 208 plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the director will solicit the review and comment of the appropriate 208 planning agency.

(9) Approval procedures for POTW pretreatment programs and POTW revision of categorical pretreatment standards. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and revising categorical pretreatment standards:

(a) Deadline for review of submission. The director will have ninety (90) days from the date of public notice of a submission complying with the requirements of subsection (8) of this section, or if a removal allowance is sought with the requirements of subsection (6) of this section, to review the submission. The director will review the submission to determine compliance with the requirements of subsection (8) of this section, and when a removal allowance is sought, with subsection (6) of this section. The director may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in paragraph (b)1a of this subsection is extended beyond thirty (30) days or if a public hearing is held as provided for in paragraph (b)2 of this subsection. In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(b) Public notice and opportunity for hearing. Upon receipt of a submission the director will commence its review. Within five (5) days after making a determination that a submission meets the requirements of subsection (8)(b) of this section, and when a removal allowance is sought with subsections (6)(d) and (8)(d) of this section, the director will:

1. Issue a public notice of request for approval of the submission:

a. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include mailing notices of the request for approval of the submission to designated CWA Section 208 (33 U.S.C. 1288) planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

b. The public notice will provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

c. All written comments submitted during the thirty (30) day comment period will be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

2. The director will also provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

a. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in paragraph (b)1b of this subsection and will indicate the interest of the person filing such request and the reasons why a hearing is warranted.

b. The director will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved.

c. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate will be published in the same newspaper as the notice of the original request. In addition notice of the hearing will be sent to those persons requesting individual notice.

3. When the director elects to defer review of a submission which authorizes a POTW to grant conditional revised discharge limits, the director will publish public notice of its election, pursuant to paragraph (b)1 of this subsection.

(c) Director's decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in paragraph (a) of this subsection, the director will approve or deny the submission based upon the evaluation in paragraph (a) of this subsection and taking into consideration comments submitted during the comment period and the record of the

public hearing, if held. When the director makes a determination to deny the request, the director will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(d) EPA objection to director's decision. No POTW pretreatment program will be approved by the director if following the thirty (30) day or extended evaluation period provided for in paragraph (b)1b of this subsection and any hearing held pursuant to paragraph (b)2 of this subsection, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections will be provided to the applicant, and each person who has requested individual notice.

(e) Notice of decision. The director will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The director will identify any authorization to modify categorical pretreatment standards by the POTW for removal of pollutants subject to the pretreatment standards.

(f) Public access to submission. The director will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

(10) Reporting requirements for POTWs and industrial users.

(a) Definition. "Control authority" as it is used in this subsection means the POTW if the POTW's submission for its pretreatment program has been approved or the director if the submission has not been approved.

(b) Reporting requirement for industrial users upon effective date of categorical pretreatment standards—baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under subsection (5)(a)4 of this section, whichever is later, existing industrial users subject to categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subparagraphs 1 through 7 of this paragraph. When reports containing this information already have been submitted to the director in compliance with the requirements of 40 CFR Part 128.140(b), the industrial user will not be required to submit this information again. New sources shall be required to submit to the control authority a report which contains the information listed in subparagraphs (1) through (5) of this paragraph:

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owner.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production and standard industrial classification of the operation carried out by the industrial user. This description may include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow in gallons per day to the POTW from regulated process streams. The control authority may allow for verifiable estimates of these flows when justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the control authority. Both daily maximum and average concentration, or mass, where required shall be reported. The sample shall be representative of daily operations;

c. When feasible samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical pretreatment standard. When composite sampling is not feasible, a grab sample is acceptable;

d. When the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd) the user shall take three (3) samples within a two (2) week period. When the flow of the stream being sampled is greater than 950,000 liters/day, the user shall take six (6) samples within a two (2) week period;

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of subsection (5) of this section in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of subsection (5) of this section, this adjusted limit along with supporting data shall be submitted to the control authority;

f. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director;

g. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

h. The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified to be a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under subsection (6) of this section, or by a fundamentally different factors variance under 401 KAR 5:055, Section 8, at the time the user submits the report required by paragraph (b) of this subsection, the information required by paragraphs (b)6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance under subsection (6) of this section or by a fundamentally different factors variance under 401 KAR 5:055, Section 8, after the user submits the report required by paragraph (b) of this subsection, any necessary amendments to the information requested by paragraphs (b)6 and 7 of this subsection shall be submitted by the user to the control authority within sixty (60) days after the modified limit is approved.

(c) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by paragraph (b)7 of this subsection:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards.

2. No increment referred to in paragraph (c)1 of this subsection shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the control authority.

(d) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the industrial user which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

(e) Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of that pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (b)4 of this subsection except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. When the control authority has imposed mass limitations on industrial users as provided by subsection (5)(c) of this section, the report required by paragraph (c)1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(f) Notice of slug loading. The industrial user shall notify the POTW immediately of any slug loading, as defined by subsection (4)(a) of this section by the industrial user.

(g) Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (b)5, (d), and (e) of this subsection shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and masss where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All sampling and analyses shall be performed in accordance with procedures established by the administrator pursuant to Section 304(g) of the CWA (33 U.S.C. Section 1314(g)), and set forth in 40 CFR Part 136. If 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the director.

(h) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

2. No increment referred to in paragraph (h)(1) of this section shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by

the POTW to return to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

(i) Initial POTW report on compliance with approved removal allowance. A POTW which has received authorization to modify categorical pretreatment standards for pollutants removed by the POTW in accordance with the requirements of subsection (6) of this section shall submit to the director within sixty (60) days after the effective date of a pretreatment standard for which authorization to modify has been approved, a report which contains all information required by subsection (6) of this section. A minimum of one (1) sample per month during the reporting period is required.

(j) Periodic reports by POTW to demonstrate continued compliance with removal allowance. The reports referred to in paragraph (i) of this subsection shall be submitted to the approval authority at six (6) month intervals beginning with the submission of the initial report referred to in paragraph (i) of this subsection unless required more frequently by the director.

(k) Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e) of this section shall be signed by an authorized representative of the industrial user. An authorized representative may be:

1. A principal executive officer of at least the level of vice president, if the industrial user is a corporation.

2. A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively.

3. A duly authorized representative of the individual designated in paragraph (k)1 or 2 of this subsection if such representative is responsible for the overall operation of the facility from which the indirect discharge originates.

(l) Signatory requirements for POTW reports. Reports submitted to the approval authority by the POTW in accordance with paragraphs (h), (i) and (j) of this subsection shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(m) Provisions governing fraud and false statements. The reports required by paragraphs (b), (d), (e), (h), (i) and (j) of this subsection shall be subject to KRS 224.994(4) and all other state and federal laws pertaining to fraud and false statements.

(n) Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of the analyses.

2. Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a minimum of three (3) years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the director, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director.

3. A POTW to which reports are submitted by an industrial user pursuant to paragraphs (b), (d), and (e) of this subsection shall retain such reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the director. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director.

(11) Confidentiality. Any information submitted to the director in accordance with this section may be claimed confidential, as provided in 401 KAR 5:060, Section 2, except that effluent data provided to the director pursuant to this section shall be available to the public without restriction.

(12) Net/gross limitations. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR 403.15. 40 CFR 403.15 is hereby incoporated by reference, revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Service, General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(13) Upset provision.

(a) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does 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.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of upset. An industrial user 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 the industrial user can identify the specific cause of the upset;

2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

3. The industrial user has submitted the following information to the POTW and control authority within twenty-four (24) hours of becoming aware of the upset or if this information is provided orally, a written submission within five (5) days:

a. A description of the indirect discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) Burden of proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, cabinet enforcement personnel will review any claims that

noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review under KRS 224.081(2). Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(f) User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

[Section 9. Suspension of an NPDES Regulation. The director may suspend any permit requirement already expressly suspended by EPA under CWA. In the KPDES program, suspension will be effected by giving notice to permittees. Provisions suspended on the date of adoption of the KPDES regulations are noted in the respective regulation.]

[Section 10. Certified Laboratories. The cabinet will designate public agencies, private consulting firms, institutions, or other types of analytical laboratories which can provide the services required under KPDES regulations.]

[(1) Certification guidelines. Such laboratories shall meet all eligibility requirements specified in laboratory certification guidelines published by the cabinet.]

[(2) All data required to be included in KPDES permit applications, under 401 KAR 5:060, Section 4(7) and (13); in monitoring and records under 401 KAR 5:065, Section 1(10) and (12)(d), and Section 2(8); and, as required by the cabinet, must be supplied by a laboratory certified by the cabinet.]

[(3) Requirement to apply. Any person who desires to be certified shall apply to the cabinet and provide all information necessary to establish required qualifications.]

[(4) Laboratories shall be deemed to hold interim certification on the effective date of this regulation unless otherwise notified by the cabinet.]

Section *10.* [11.] Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, *224.020,* 224.033(19), (21), (22), (23), 224.034, 224.060

NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. 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 1342(d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

Section 1. Applying for a KPDES Permit. (1) Application requirements.

(a) 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 director as described in this regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.5, continuation of expiring permits. *For the purpose of this section, the director will accept the information required under subsection (4) 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.*

(b) Any person who is required to have a permit and who does not have an effective permit, shall submit a complete application to the director in accordance with this section and 401 KAR 5:075. A complete application shall include a BMP program, if necessary, under 401 KAR *5:065* [5:080], Section *2(10)* [5]. The following are exceptions to the application requirements:

1. Persons covered by general permits under 401 KAR 5:055, Section *5* [6];
2. Discharges excluded under 401 KAR 5:055, Section 1; and
3. Users of a privately owned treatment works unless the director requires otherwise under 401 KAR *5:065* [5:070], Section *2(12).*

(2) Time to apply. Any person proposing a new discharge shall submit an application at least *150* [180] days before the date on which the discharge is to commence, unless permission for a later date has been granted by the director.

(3) Duty to apply. When a facility or activity is owned by one (1) person but is operated by another person, it is the *owner's* [operator's] duty to obtain a permit.

(4) Duty to reapply.

(a) Any person with a currently effective permit shall submit a new application at least *150* [180] days before the expiration date of the existing permit, unless permission for a later date has been granted by the director. The director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The director, 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.

3. Effect. Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the director may choose to do any or all 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 the KPDES regulations.

(5) Completeness. The director will not issue a KPDES permit before receiving a complete application for a permit. A permit application is complete when the cabinet receives an application form with any supplemental information which is completed to the director's satisfaction.

(6) Information requirements. All applicants for KPDES permits shall provide the following information to the director, using the application form provided by the director.

(a) The activities being conducted which require the applicant to obtain a KPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as to federal, state, private, public, or other entity.

(e) A listing of all other relevant environmental permits, *or construction approvals* [including air pollution, water quality and solid or hazardous waste permits] issued by the cabinet or other state or federal permits, as requested.

(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 structure and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within *one-quarter (¼)* [one (1)] mile of the facility property boundary.

(g) A brief description of the nature of the business.

(h) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge *pursuant to subsection (9) of this section and the "Water Protection Guidelines for the New Source KPDES Program."*

(7) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(8) Service of process. Every applicant and permittee shall provide the cabinet *an address* [and others] for receipt of any legal nature *for* [or] 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. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(9) Special provisions for applications from new sources.

(a) The owner or operator of any facility which may be a new source, as defined in 401 KAR 5:050, must comply with the provisions of this subsection.

(b) 1. Before beginning any on-site construction as defined in water protection guidelines, the owner or operator of any facility which may be a new source may be required to submit information to the director so that he can determine if the facility is a new source. At a minimum, the owner or operator of any facility which may be a new source discharge affecting any outstanding resource waters, as designated in 401 KAR 5:031, will be required to submit information for a new source determination. The director may request any additional information needed to determine whether the facility is a new source.

2. The director may make an initial determination whether the facility is a new source within thirty (30) days of receiving all necessary information under paragraph (b)1 of this subsection.

(c) The director shall issue a public notice in accordance with Section 5(1)(a)4 of 401 KAR 5:075 of the new source determination under paragraph (b) of this subsection. If the director has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of the "Water Protection Guidelines for the New Source KPDES Program."

(d) Any interested person may challenge the director's initial new source determination by requesting a hearing under 401 KAR 5:075 within thirty (30) days of issuance of the public notice of the initial determination. The director may defer the evidentiary hearing on the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

Section 2. Confidentiality of Information. (1) In accordance with KRS 224.035 any information submitted to the cabinet pursuant to the KPDES regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the cabinet may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in KRS 224.035.

(2) Information, which includes effluent data, required by KPDES application forms provided by the director under Section 1 of this regulation may not be claimed confidential. Information contained in KPDES permits or permit applications may not be claimed as confidential business information.

Section 3. Signatories to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a principal executive officer of

at least the level of vice-president;

(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.

(2) Reports. All reports required by permits and other information requested by the director shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if the following conditions are met:

(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, superintendent, or position of equivalent responsibility;

(c) The written authorization is submitted to the director.

(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 must be submitted to the director 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 this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Section 4. Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. Existing manufacturing, commercial, mining, and silvicultural dischargers applying for KPDES permits shall provide the following information to the director, using application forms provided by the director:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water shall be provided by the applicant.

(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 shall be included in the application. 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 show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. The applicant shall provide 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, distillation tower. For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) Intermittent flows. If any of the discharges described in subsection 3 of this section are intermittent or seasonal, the applicant shall provide 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 EPA effluent guideline 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 shall be included. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section *3(2)* [1].

(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 shall be included.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided by the applicant. When quantitative data for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluents, the director may allow the applicant to test only one (1) outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative date for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must 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 must be used. An applicant is expected to know or have reason to believe 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.

(a)1. Every applicant shall report quantitative data for every outfall for the following pollutants:

a. Biochemical oxygen demand (BOD).
b. Chemical oxygen demand.
c. Total organic carbon.
d. Total suspended solids.
e. Ammonia (as N).
f. Temperature (both winter and summer).
g. pH.

2. At the applicant's request, the director may waive the reporting requirements for one (1) or more of the pollutants listed in subparagraph 1 of this paragraph.

(b) Each applicant with processes in one (1) or more

primary industry category, listed in Section 10 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Section 13(1) of this regulation for the applicant's industrial category or categories unless the applicant qualifies as a small business under subsection (8) of this section. Section 13(2) of this regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromotography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Section 13(3) of this regulation: the toxic metals, cyanide, and total phenols.

(c) Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

1. All pollutants listed in Section 13(2) or (3) of this regulation, the toxic pollutants, for which quantitative data is not otherwise required under paragraph (b) of this subsection except that an applicant qualifying as a small business under subsection 8 of this section is not required to analyze for the pollutants listed in Section 13(2) of this regulation, the organic toxic pollutants.

2. All pollutants in Section 13(4) of this regulation, certain conventional and nonconventional pollutants.

(d) Each applicant shall indicate any knowledge or to believe that any of the pollutants in Section 13(5) of this regulation, certain hazardous substances and asbestos is 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 for any pollutant.

(e) 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); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one (1) of the following criteria is exempt from the requirements in paragraphs (b)1 or (c)1 of this subsection to submit quantitative data for the pollutants listed in Section 13(2) of this regulation, 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. The application shall include a listing of any toxic pollutant which the applicant:

(a) Does use or manufacture as an intermediate or final product or byproduct currently; or

(b) Expects to use or manufacture as an intermediate or final product or byproduct during the next five (5) years.

(10) Potential discharges. The applicant shall provide a description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two (2) times the values reported in subsection (7) of this section over the next five (5) years.

(11) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe 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.

(12) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this regulation, the identity of each laboratory or firm and the analyses performed shall be in-

Section 5. Concentrated Animal Feeding Operations: Specific Application Requirements. (1) Permit required. Concentrated animal feeding operations are point sources subject to the KPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of the KPDES regulations, 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.

(c) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Section 11 of this regulation or which the director designates under subsection (3) of this section.

(3) Case-by-case designation of concentrated animal feeding operations.

(a) The director 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 director will 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 wastewaters 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 wastewaters into waters of the Commonwealth; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in Section 11 of this regulation will 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 the 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 confined in the operation.

(c) A permit application will not be required from a concentrated animal feeding operation designed under this section until the director or an authorized representative has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the KPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the director, using the application form provided by the director:

(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 exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

Section 6. Concentrated Aquatic Animal Production Facilities: Specific Application Requirements. (1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the KPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Section 12 of this regulation or which the director designates under subsection (3) of this section.

(3) Case-by-case designation of concentrated aquatic animal production facilities.

(a) The director 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 the waters of the Commonwealth. In making this designation the director will 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 will not be required from a concentrated aquatic animal production facility designated under this section until the director or authorized representative has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the KPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the director, using the application form provided by the director:

(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 7. Aquaculture Projects: Specific Application Requirements. (1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the KPDES permit program and in accordance with 401 KAR 5:080, Section 2.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "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.

Section 8. Separate Storm Sewers: Specific Application Requirements. (1) Permit requirement. Separate storm sewers, as defined in this section are point sources subject to the KPDES permit program. Separate storm sewers may be permitted either individually or under a general permit. A KPDES permit for discharges into waters of the Commonwealth from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.

(2) Definition and criteria.

(a) "Separate storm sewer" means a conveyance or system of conveyances, including pipes, conduits, ditches, and channels, primarily used for collecting and conveying storm water runoff and which is either:

1. Located in an urbanized area as designated by the University of Louisville's Urban Studies Center consistent with the Bureau of the Census; or

2. Not located in an urbanized area but designated under subsection (3) of this section.

(b) Except as provided in paragraph (c) of this subsection, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the director under subsection (3) of this section is not considered a point source and is not subject to the provisions of this subsection.

(c) Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the Commonwealth or into separate storm sewers are point sources that must obtain KPDES permits but are not separate storm sewers.

(d) Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.

(3) Case-by-case designation of separate storm sewers. The director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA

promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

(a) A Kentucky water quality management plan which contains requirements applicable to such point sources is approved by EPA; or

(b) The director determines that a storm sewer is a significant contributor of pollution to the waters of the Commonwealth. In making this determination the director will consider the following factors.

1. The location of the discharge with respect to waters of the Commonwealth;
2. The size of the discharge;
3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and
4. Other relevant factors.

Section 9. Silvicultural Activities: Specific Application Requirements. (1) Permit requirement. Silvicultural point sources, as defined in this section, are point sources subject to the KPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means 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.

Section 10. 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 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) Electorical 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 11. Criteria for Determining a Concentrated Animal Feeding Operation. An animal feeding operation is a concentrated animal feeding operation for purposes of Section 5 of this regulation if either of the following criteria are met:

(1) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle;
(b) 700 mature dairy cattle, whether milked or dry cows;
(c) 2,500 swine each weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds;
(d) 500 horses;
(e) 10,000 sheep or lambs;
(f) 55,000 turkeys;
(g) 100,000 laying hens or broilers, if the facility has continuous overflow watering;
(h) 30,000 laying hens or broilers, if the facility has a liquid manure handling system;
(i) 5,000 ducks; or
(j) 1,000 animal units.

(2) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

(a) 300 slaughter or feeder cattle;
(b) 200 mature dairy cattle, whether milker 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 handling system;
(i) 1,500 ducks; or
(j) 300 animal units; and
(k) Either one (1) of the following conditions are met:

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 and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in subsections (1) and (2) of this section if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

(4) Definitions.

(a) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting over twenty-five (25) kilograms (approximately fifty-five (55) pounds) multiplited by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(b) "Manmade" means constructed by man and used for the purpose of transporting wastes.

Section 12. Criteria for Determining a Concentrated Aquatic Animal Production Facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of Section 6 of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(1) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

(a) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(b) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(c) Cold water aquatic animals include, but are not limited to the Salmonidoe family of the fish; e.g. trout and salmon.

(2) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

(a) Closed ponds which discharge only during periods of excess runoff; or

(b) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(c) "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows.

Section 13. KPDES Permit Application Testing Requirements. (1) Table I—Testing Requirements for Organic Toxic Pollutants for Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	—
Alumimum forming	(*)	(*)	(*)	—
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)	—	(*)	—
Coal mining	(*)	(*)	(*)	(*)
Coil coating	(*)	(*)	(*)	—
Cooper forming	(*)	(*)	(*)	—
Electric and electronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	—
Explosives manufacturing	—	(*)	(*)	—
Foundries	(*)	(*)	(*)	—
Gum and wood chemicals	(*)	(*)	(*)	(*)
Inorganic chemicals manufacturing	(*)	(*)	(*)	—
Iron and steel manufacturing	(*)	(*)	(*)	—
Leather tanning and finishing	(*)	(*)	(*)	(*)
Mechanical products manufacturing	(*)	(*)	(*)	—
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining	(*)	(*)	(*)	(*)
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	(*)	(*)	(*)
Pharmaceutical preparations	(*)	(*)	(*)	—
Photographic equipment and supplies	(*)	(*)	(*)	(*)
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)	—	—	—
Porcelain enameling	(*)	—	(*)	(*)
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paper mills	(*)	(*)	(*)	(*)
Rubber processing	(*)	(*)	(*)	—
Soap and detergent manufacturing	(*)	(*)	(*)	—
Steam electric power plants	(*)	(*)	(*)	—
Textile mills	(*)	(*)	(*)	(*)
Timber products processing	(*)	(*)	(*)	(*)

[1]The toxic pollutants in each fraction are listed in Table II.
*Testing required.

(2) Table II—Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) Volatiles

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene
17V 1,2-dichlorpropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

(b) Acid compounds

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2,4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

(c) Base/neutral

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroisopropyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthalene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenzo(a,h)anthracene
20B 1,2-dichlorobenzene
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenxene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) Pesticides.

1P aldrin
2P α-BHC
3P β-BHC
4P γ-BHC
5P δ-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P α-endosulfan
12P β-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

(3) Table III—Other Toxic Pollutants: Metals, Cyanide, and Total Phenols

(a) antimony, total
(b) arsenic, total
(c) beryllium, total
(d) cadmium, total
(e) chromium, total
(f) copper, total
(g) lead, total
(h) mercury, total
(i) nickel, total
(j) selenium, total
(k) silver, total
(l) thallium, total
(m) zinc, total
(n) cyanide, total
(o) phenols, total

(4) Table IV—Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present

(a) bromide
(b) chlorine, total residual
(c) color
(d) fecal coliform
(e) fluoride
(f) nitrate-nitrite
(g) nitrogen, total organic
(h) oil and grease
(i) phosphorus, total
(j) radioactivity
(k) sulfate
(l) sulfide
(m) sulfite
(n) surfactants
(o) aluminum, total
(p) barium, total
(q) boron, total
(r) cobalt, total
(s) iron, total
(t) magnesium, total
(u) molybdenum, total
(v) manganese, total
(w) tin, total
(x) titanium, total

(5) Table V—Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

(a) Toxic pollutants-asbestos
(b) Hazardous substance

1. acetaldehyde
2. allyl alcohol
3. allyl chloride
4. amyl acetate
5. aniline
6. benzonitrile
7. benzyl chloride
8. butyl acetate
9. butylamine
10. captan
11. carbaryl
12. carbofuran
13. carbon disulfide
14. chlorpyrifos
15. coumaphos
16. cresol
17. crotonaldehyde
18. cyclohexane
19. 2,4-D(2,4-dichlorophenoxy acetic acid)
20. diazinon
21. dicamba
22. dichlobenil
23. dichlone
24. 2,2-dichloropropionic acid
25. dichlorvos
26. diethyl amine
27. dimethyl amine
28. dintrobenzene
29. diquat
30. disulfoton
31. diuron
32. epichlorohydrin
33. ethanolamine
34. ethion
35. ethylene diamine

36. ethylene dibromide
37. formaldehyde
38. furfural
39. guthion
40. isoprene
41. isopropanolamine
42. kelthane
43. kepone
44. malathion
45. mercaptodimethur
46. methoxychlor
47. methyl mercaptan
48. methyl methacrylate
49. methyl parathion
50. mevinphos
51. mexacarbate
52. monethyl amine
53. monomethyl amine
54. naled
55. napthenic acid
56. nitrotoluene
57. parathion
58. phenolsulfanate
59. phosgene
60. propargite
61. propylene oxide
62. pyrethrins
63. quinoline
64. resorcinol
65. strontium
66. strychnine
67. styrene
68. 2,4,5-T(2,4,5-trichlorophenoxy acetic acid)
69. TDE(tetrachlorodiphenylethane)
70. 2,4,5-TP (2,-(2,4,5-trichlorophenoxy) propanoic acid)
71. trichlorofon
72. Triethylamine
73. trimethylamine
74. uranium
75. vanadium
76. vinyl acetate
77. xylene
78. xylenol
79. zirconium

[Section 14. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.]

[* NOTE: The Environmental Protection Agency has suspended until further notice 40 CFR 122.53(d)(7)(ii)(A) as it applies to the categories listed below. The Natural Resources and Environmental Protection Cabinet hereby suspends the corresponding section of this regulation, Section 4(7)(b)1, until such time as EPA publishes notice in the Federal Register of a final decision on this provision.]

Section 14. Application Requirements of Section 4(7)(b)1 of this Regulation Exempted for Certain Categories and Subcategories of Primary Industries. Categories of dischargers for which Section 4(7)(b)1 of this regulation is *exempted* [suspended] for categories and subcategories of the primary industries listed in Section 10 of this regulation.

(1) [1.] Coal mines.

(2) [2.] Testing and reporting for all four (4) organic fractions in the Greige Mills Subcategory of the Textile Mills industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) [3.] Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four (4) fractions in all other subcategories of this industrial category.

(4) [4.] Testing and reporting for all four (4) GC/MS fractions in the Porcelain Enameling industry.

(5) [5.] Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) [6.] Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) [7.] Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) [8.] Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories of the Pulp Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Draft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) [9.] Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

Section 15. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, *224.020,* 224.033(11), (19), (21), (22), 224.034, 224.060, 224.994(1), (4)
NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters

of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions omposed in 33 U.S.C. Sections 1342(b) and 1342(d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all KPDES permits, the director will establish conditions as required on a case-by-case basis under Section 2 of this regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 *revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference,* for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES regulations is subject to penalties under KRS 224.994(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. Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring *KPDES program* [permit] 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 director at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(e) Any person who falsifies, tampers with, or knowlingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be subject to penalties under KRS 224.994(4).

(11) Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified as indicated in 401 KAR 5:060, Section 3. 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 224.994(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alteration or additions to the permitted facility.

(b) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. This permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the date submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director 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 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 director 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* [information] which must 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 director in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e) and (f) of this subsection, at the time 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 director, it shall promptly submit such facts or information.

(13) Occurrence of a bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "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 does not mean economic loss caused by delays in production.

(b) 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. A bypass is not subject to the provisions of paragraphs (c) and (d) of this subsection.

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. *Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.*

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of subsection (12), twenty-four (24) hour notice. *Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.*

(d) Prohibition of bypass.

1. Bypass is prohibited, and the director may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satified if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required under pargraph (c) of this subsection.

2. The director may approve an anticipated bypass, after considering its adverse effects, if the director 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) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does 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.

(b) Effect of an upset. An upset constitutes an af-

firmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, of other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) 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 paragraph (f) of subsection (12); and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this regulation apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13) and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the director as soon as it knows or has reason to believe:

1. That any activity has occurred or may occur which could result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge may exceed the highest of the following "notification levels:"

a. One hundred micrograms per liter (100 μg/1);

b. Two hundred micrograms per liter (200 μg/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/1) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/1) for anitmony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7) or (10);

d. The level established by the director in accordance with subsection (6) of Section 2 of this regulation.

2. That is has begun or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4(9).

(b) POTWs. POTWs shall provide adequate notice to the director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject ot the KPDES regulations if it were directly discharging those pollutants; and

2. 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.

3. For purposes of this paragraph, adequate notice shall include information on: the quality and quantity of effluent introduced into the POTWs; and, any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this regulation each KPDES permit will include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; [as required by 40 CFR Chapter I, Subchapter N, or] new source performance standards; *and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N, are incorporated by reference as specified in Section 4 of this regulation,* [promulgated by EPA] 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) will be included, as applicable. *Compliance with these effluent limitations and standards will constitute compliance with 401 KAR 5:035 and 401 KAR 5:045.*

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such 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 director will institute proceedings under these 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 401 KAR 5:060, Section 10, requirements under the KPDES regulations will 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 will 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 will 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 will include those standards or limitations.

(b) After June 30, 1981, any permit issued will include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the clause required by paragraph (a) of this subsection.

(c) The director will 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 will be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and regulations promulgated pursuant thereto;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 U.S.C. Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or 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 where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection will be includedin the permit, if applicable. Limitations will be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations will be included in the fact sheet under 401 KAR 5:075, Section 5.

(a) Limitations will control all toxic pollutants which:

1. The director determines, based on information reported in a permit application under 401 KAR 5:060, Section 4(7) or (10), or in a notification under Section 1(15)(a) of this 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 byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the director, 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 regulation, upon a petition from the permittee or on the director's initiative will be incorporated as a permit condition, if applicable. This new notification level may 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 will report violations of maximum daily discharge limitations under Section 3(12)(f) of this regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list will 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 will incorporate, as applicable in addition to subsection (12) of Section 1 of this 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;

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(9) of this regulation; pollutants in intake water for net limitations under Section 3(8) of this regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this regulation.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Requirements to report monitoring results with a frequency dependent on the nature and effect of the *dis*charge, but in no case less than once a year.

(9) Pretreatment program for POTWs. If applicable to the facility the permit will 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 regulations.

(b) Submit a local program when required by and in accordance with Section *9 of 401 KAR 5:055* [2(1) of this regulation] to assure compliance with pretreatment standards to the extent applicable in the KPDES regulations. The local program will be incorporated into the permit as described in *401 KAR 5:055,* Section *9* [2(1) of this regulation, (40 CFR Part 403)]. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under *KRS Chapter 224 and* the KPDES regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits. The permit will include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit will 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 Section 6 of 401 KAR 5:070. The following may be exceptions from this provision:

(a) If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of

pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;

(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);

(c) If 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 Section 6 of 401 KAR 5:070;

(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The director'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 will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants made by the director to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage sludge. Requirements will be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 401 KAR 47:050.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will 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.

(16) 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, will be included as applicable.

(17) 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 will be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this regulation; with BMPs where limitations are infeasible; and under subsection (9) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous five (5) years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of KRS 224.034.

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average montly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:050, Section 1(7), 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 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 will require the permittee to comply with both limitations.

(7) Pollutants in intake water. Except as provided in subsection (8) of this section, effluent limitations imposed in permits will not be adjusted for pollutants in the intake water.

(8) Net limitations.

(a) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a net basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

1.a. The applicable federally promulgated effluent limitations and standards specifically provide that they will be applied on a net basis; or

b. The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

2. The permit contains conditions requiring:

a. The permittee to conduct additional monitoring, for example, for flow and concentration of pollutants, as necessary to determine continued eligibility for and compliance with any such adjustments; and

b. The permittee to notify the director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under Section 6 of 401 KAR 5:070.

(b) Permit effluent limitations or standards adjusted under this paragraph will be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this subsection will be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards will not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor will effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(9) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(10) 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* [7].

(11) Secondary treatment information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, *revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.*

Section 4. Federal Effluent Limitations and Standards and New Source Performance Standards Incorporations. (1) 40 CFR Chapter I, Subchapter N, Parts 400-424 and Part 425-460, revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.

(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:

Industry	*40 CFR Part*	*Federal Register*	*Date*
Coal mining	*434*	*47 FR 45382*	*10-13-82*
Coil coating (phase I)	*465*	*47 FR 54232*	*12-1-82*
Inorganic chemicals (phase I)	*415*	*47 FR 28260*	*6-29-82*
Iron and steel manuf.	*420*	*47 FR 41738*	*9-22-82*
Leather tanning and finishing	*425*	*47 FR 52848*	*11-23-82*
Ore mining	*440*	*47 FR 54598*	*12-3-82*
Petroleum refining	*419*	*47 FR 46434*	*10-18-82*
Porcelain enameling	*466*	*47 FR 53172*	*11-24-82*
Pulp and paper	*430*	*47 FR 52006*	*11-18-82*
Steam-electric	*423*	*47 FR 52290*	*11-19-82*
Textile mills	*410*	*47 FR 38810*	*9-2-82*

Section *5.* [4.] Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:070. Provisions of the KPDES permit.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, *224.020,* 224.033(19), (21), (22), (23), 224.034(1), (4), 224.060
NECESSITY AND FUNCTION: KRS 224.034(1) provides that the Natural Resources and Environmental Protection Cabinet 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 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d). KRS 224.034(1) requires that any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 U.S.C. Sections 1311, 1312 and 1326(a). Further KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification, revocation and reissuance.

Section 1. Duration of Permits. (1) KPDES permits will be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR *5:060* [5:065], Section 1*(4)*[(1)](b), the term of a permit will not be extended by modification beyond this maximum duration. The director may issue a permit for a duration that is less than the full five (5) year term.

(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2)2c, d and e, whether or not applicable federal effluent limitations guidelines have been promulgated or approved.

Section 2. Schedules of Compliance. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible. In addition, schedules of compliance will require compliance not later than the applicable statutory deadline as specified in 401 KAR 5:080.

(b) The first KPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger will not contain a schedule of compliance under this section.

(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit will be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activites at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule will lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance no later than the deadline, specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules will include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

Section 3. Requirements for Recording and Reporting of Monitoring Results. All permits will specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall be no less frequent than specified in Section 2 of this regulation.

Section 4. Effect of a Permit. (1) Except for any toxic effluent standards and prohibitions included in 401 KAR 5:065, Section 1(1)(b), compliance with a KPDES permit during its term constitutes compliance, for purposes of enforcement, with the KPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections 6 and 7 of this regulation.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

Section 5. Transfer of Permits. (1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Section 6 of this regulation, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the KPDES regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the director at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this regulation. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.

(3) If a new KPDES permit is prepared as a result of either subsection (1) or (2) of this section, then the new permittee shall be subject to the "duplicate permit fee" as specified in 401 KAR 5:085, Section 5.

Section 6. Modification or Revocation and Reissuance of Permit. When the director receives any information, [for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under 401 KAR 5:075 or conducts a review of the permit file] the director may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 401 KAR 5:075 must be followed.

(1) Causes for modification. The following are causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. If the director has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised regulations, guidance or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued then cause may exist for modification. However, the permit may be modified only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on EPA effluent limitation guidelines or water quality standards;

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with Section 2 of 401 KAR 5:075, within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Section 2 of 401 KAR 5:075 within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the director determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a KPDES compliance schedule be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) In addition the director may modify a permit:

1. When the permittee has filed a request for a variance under 401 KAR 5:055, Section 7, [8] or for "fundamentally different factors" within the time specified in 401 KAR 5:080, Section 3, and the director processes the request under the applicable provisions.

2. When required to incorporate as applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under Section 2(3) of 401 KAR 5:065, for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 CFR 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under Section 3(8) of 401 KAR 5:065.

5. When a discharger is no longer eligible for net limitations, as provided in Section *3* [2](8)(a)2b of 401 KAR 5:065.

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4.

9. To establish a "notification level" as provided in Section 2(6) of 401 KAR 5:065.

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, in the case of the POTW which has received a grant under CWA 202(a)(3) (33 U.S.C. Section 1282(a)(3)) for 100% of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2) (33 U.S.C. Section 1282(a)(2)). In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the director to notify an affected state whose waters may be affected by a discharge from Kentucky.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively revoke or reissue a permit:

(a) Cause exists for termination under Section 7 of this regulation and the director determines that modification or revocation and reissuance is appropriate.

(b) The director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section will be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements; or

(d) Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director.

(e) Change the construction schedule for a discharger which is a new source.

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Section 7. Termination of Permit. (1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(d) KPDES permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(2) The director will follow the applicable procedures of 401 KAR 5:075 in terminating a KPDES permit under this section.

Section 8. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.005, 224.033(5),(9),(23)
PURSUANT TO: KRS 13.082, *224.020,* 224.033(8), (11), (19), (22), 224.034, 224.081, 224.083, 224.085.
NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034(1) establishes that the cabinet 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 et seq.) subject to the conditions imposed in 33 U.S.C. Section 1342(b) and 1342(d). This regulation sets forth the procedures through which the cabinet will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. (1) Any person who requires a permit under the KPDES program shall complete, sign and submit to the director an application for the permit as required under 401 KAR 5:060, Section 1. Applications are not required for KPDES general permits. However, operators who elect to be covered by a general permit shall submit written notification to the director at such time as the director indicates in Section 3 of this regulation.

(2) The director will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 3.

(4) The director will review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger will be reviewed for completeness by the director within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the director will notify the applicant in writing whether the application is complete. If the application is incomplete, the director will list the information necessary to make the application complete. When the application is for an existing source, the director will specify in the notice of deficiency a date for submitting the necessary information. The director will notify the applicant that the application is complete upon receiving this information. After the application is completed, the director may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and regulations promulgated pursuant thereto.

(6) If the director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the director will notify the applicant and a date will be scheduled.

(7) The effective date of an application is the date on which the director notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major *facility* [KPDES] new source, or major *facility* [KPDES] new discharger, the director will no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the director intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under this regulation.

(9) Conflicts of interest.

(a) The director who issues a permit will be subject to the KPDES policy memorandum concerning conflicts of interest.

(b) Any person aggrieved by the issuance of a permit under the KPDES regulations may challenge the permit pursuant to Section *13* [14] of this regulation if the policy memorandum has been violated.

(c) The hearing officer will remand any permit issued in violation of the policy memorandum to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit will be subject to the policy memorandum set forth in paragraph (a) of this subsection. The reconsideration will require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the director as a direct result of a conflict of interest.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Termination. (1) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the director's initative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the director decides the request is not justified, the director will send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the director tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the director shall prepare a draft permit under Section 3 of this regulation incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the director will require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit will remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in 401 KAR 5:070, Section 6(3) are not subject to the requirements of this section.

(4) If the director tentatively decides to terminate a permt under 401 KAR 5:070, Section 7, the director will issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this regulation.

Section 3. Draft Permits. (1) Once an application is complete, the director will tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the director makes a preliminary decision to deny the permit application, the director will issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the director's determination under Section 11 of this regulation is that the preliminary decision to deny the permit application was incorrect, the director will withdraw the notice of intent to deny and proceed to prepare a draft

permit under subsection (4) of this section.

(3) If the director makes a preliminary decision to issue a KPDES general permit, the director will prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the director decides to prepare a draft permit, the director will prepare a draft permit that contains the following information:

(a) All conditions under 401 KAR 5:065, Section 1;

(b) All compliance schedules under 401 KAR 5:070, Section 2;

(c) All monitoring requirements under 401 KAR 5:070, Section 3; and

(d) Effluent limitations, standards, prohibitions and conditions under 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075 and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section will be accompanied by a fact sheet and will be based on the administrative record, publicly noticed, and make available for public comment. The director will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A demand for a hearing may be made pursuant to KRS 224.081 and Section *13* [14] of this regulation following the issuance of a final decision.

Section 4. Fact Sheets. (1) A fact sheet will be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (4) of this section, and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The director will send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet will include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) A quantitative *and qualitative* description of the discharges described in the application;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures under KRS 224.081 and Section *13* [14] of this regulation by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4) (a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);

2. Limitations on internal waste streams under 401 KAR 5:065, Section *3(9)* [2(8)]; or

3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1*(2)(a)* [(3)].

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or a municipality, *an* [or] explanation of the director's decision on regulation of users under 401 KAR 5:065, Section 2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

Section 5. Public Notice of Permit Actions and Public Comment Period. (1) Scope.

(a) The director will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under Section 3(2) of this regulation;

2. A draft permit has been prepared under Section 3(4) of this regulation;

3. A hearing has been scheduled under Section 7 of this regulation; and

4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:050.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 2 of this regulation. Written notice of that denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing will be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section will be given by the following methods:

(a) The cabinet *will* [may] mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.

1. The applicant, except for KPDES general permittees, and Region IV, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historic Society and other appropriate government authorities, including any affected sates;

3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

4. Any User identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who failes to respond to such a request.

(b) For major permits and KPDES general permits, the cabinet *will* [may] publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this part will contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of KPDES draft general permits under 401 KAR 5:055, Section *5* [6];

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection the public notice for a permit hearing under Section 7 of this regulation will contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section *7(4)* [8(5)]. In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge *when a* [under] 401 KAR *5:055, Section 7(4)* [5:065] request has been filed under 401 KAR 5:055, Section 3, will include;

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Section 301 or 306 (33 U.S.C. Sections 1311 or 1316); and

2. A statement that a 401 KAR *5:055* [5:065], Section *7(4),* request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

[3. If the applicant has filed an early screening request under 401 KAR 5:080, Section 4(3) for variance a statement that the applicant has submitted such plan.]

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in paragraphs (3)(a)1, 2, 3, and 4 of this section will be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

Section 6. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 5 of this regulation any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in Section 12 of this regulation.

Section 7. Public Hearings. (1) The director will hold a public hearing when a significant degree of public interest in a draft permit is found on the basis of requests. The director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in Section 5 of this regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this regulation will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made availablve to the public.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's preliminary decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make sup-

porting material not already included in the record available to the cabinet as directed by the director. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they should be freely established under Section 5 of this regulation to the extent. Nothing in this section shall be construed to prevent any person agrieved by a final permit decision from filing a demand for a hearing under KRS 224.081 and Section *13* [14] of this regulation.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies (1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the director in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions will be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the director may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

Section 10. Reopening of the Public Comment Period. (1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the director may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this regulation;

(b) Prepare a revised fact sheet under Section 4 of this regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this regulation should define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this regulation.

Section 11. Issuance and Effective Date of Permit. *(1)* After the close of the public comment period under Section 5 of this regulation, the director will issue, deny, modify, revoke, reissue or terminate a permit. The director will notify the applicant and each person who has submitted written comments or requested notice of that determination. *This notice will include reference to the procedures for appealing the decision.* For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision will become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:

(a) A later effective date is specified in the decision; or

(b) A stay is granted pursuant to KRS 224.081(2) and Section 13 of this regulation; or

(c) No comments requested a change in the draft permit, in which case the permit will become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to demanding a hearing under KRS 224.081(2) and Section 13 of this regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the director and shall not begin on the date the permit decision becomes effective.

Section 12. Response to Comments. At the time that any final permit decision is issued under Section 11 of this regulation the director shall issue a response to comments. This response will:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response will fully consider all comments resulting from any hearing conducted under this regulation.

(3) The response to comments will be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.081, 224.083, 224.085 and any regulations promulgated pursuant thereto.

[Section 13. Decision on Variances. (1) The director may grant or deny requests for the following variances:]

[(a) After consultation with the regional administrator, an extension based on the use of innovative technology; or]

[(b) A variance under 401 KAR 5:055, Section 8 for thermal pollution.]

[(2) The director may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:]

[(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;]

[(b) A variance based on the economic capability of the applicant under 401 KAR 5:055, Section 8;]

[(c) A variance based on water quality related effluent limitations under 401 KAR 5:055, Section 8.]

[(3) The regional administrator may deny, forward, or submit to the EPA Director of Water Enforcement and Permits with a recommendation for approval, a request for variance listed in subsection (2) of this section that is forwarded by the director.]

[(a) The EPA Director of Water Enforcement and Permits may approve or deny any variance request submitted under subsection (3) of this section. If the EPA Director of Water Enforcement and Permits approves the variance,

the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied will identify the applicable procedures for appealing that decision.]

Section *13.* [14.] Hearings under KRS 224.081. (1) A determination under Section 11 when issued by the director, will be subject to a demand for a hearing pursuant to KRS 224.081(2).

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to KRS 224.081(2).

(3) Any hearing held pursuant to this section will be subject to the provisions of KRS 224.083 and 224.085.

(4) Failure to raise issued pursuant to Section 8 of this regulation will not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.081(2).

Section *14.* [15.] Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, *224.026,* 224.033(19), (21), (23), 224.034(1), (4), 224.060
NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 provides that the cabinet 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 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d). This section further provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 U.S.C. Sections 1311, 1312 and 1326(a). This regulation sets forth the criteria and standards for the KPDES permitting system.

Section 1. 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 will be imposed in a KPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

1. For POTW's effluent limitations based upon:

a. Secondary treatment as required by CWA Section 301(b)(1)(B) (33 U.S.C. Section1311(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 regulations, effluent limitations requiring:

a. The best practicable control technology currently available (BPT) as required by CWA Section 301(b)(1)(A) (33 U.S.C. Section 1311(b)(1)(A))—from date of permit issuance;

b. For conventional pollutants, the best conventional pollutant control technology (BCT)—not later than July 1, 1984;

c. For all toxic pollutants referred to in Section *5* [7] of this regulation as required by CWA Section 301(b)(2)(A) (33 U.S.C. Section 1311(b)(2)(A)) the best available technology economically achievable (BAT)—not later than July 1, 1984;

d. For all toxic pollutants other than those listed in Section *5* [7] of this regulation effluent limitations based on the BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit; and

e. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(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)* [8(1)];

[b. Water quality related variance from BAT, as indicated in 401 KAR 5:055, Section 8(4); and]

b. [c.] Thermal variance from BPT, BCT and BAT, under Section 4 of this regulation, may be authorized.

2. An extension of the BAT deadline may be applied for under 401 KAR 5:055, Section *7(3)* [8(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 re-examined 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 regulation.

2. On a case-by-case basis to the extent that EPA-

promulgated effluent limitations are inapplicable. The permit writer 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, including EPA draft or proposed development documents or guidance; 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 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) Technology-based treatment requirements are applied prior to or at the point of discharge.

(e) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" 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[s] 3 [and 4]; 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.

(f) Technology-based effluent limitations will be established under this 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.

(g)1.The director 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 will 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 pollutant(s) 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 (g)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

2. The director 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 substance(s) 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 (g)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(iv) Hazardous substances which are also toxic pollutants are subject to paragraph (g)1 of this subsection.

3. The director may 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 pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

4. Toxic pollutants identified under paragraph (g)1 of this subsection remain subject to 401 KAR *5:065* [5:060], 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 will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the KPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No KPDES permit will be issued to an aquaculture project unless:

1. The director 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 director, 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 director, 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 director determines that the crop shall not have a significant potential for human health hazards resulting from its consumption; and

5. The director 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 will not result in the enlargement of a pre-existing mixing zone area beyond what had been designated for the original discharge.

(b) No permit will 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 will 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 will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing 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 director in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section, fundamentally different factors variance, will be approved only if:

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 will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference;

2. The alternative effluent limitation or standard will ensure compliance with the KPDES 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 non-water 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 will be approved only if:

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 non-water 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 applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water 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 will 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 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 factor(s) 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 regulation

shall be submitted in duplicate to the director in accordance with 401 KAR 5:075.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) 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)) will also be used in KPDES permits and will be referred to as 401 KAR 5:055, Section *7(4)* [8(5)], variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under Section *7(4)* [8(5)] of 401 KAR 5:055.

(b) "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.

(c) The term "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 by a lack of domination by pollution tolerant species. Such a community may include historically non-native 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 will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with Section 1(1)(b) of 401 KAR 5:065 and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055, Section *7(4)* [8(5)].

(3) Early screening of applications for 401 KAR 5:055, Section *7(4)* [8(5)], 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. Such data and information as may be available to assist the director 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 director 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 director's approval a detailed plan of study which the discharger will undertake to support its 401 KAR 5:055, Section *7(4)* [8(5)], 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 director will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the director 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 feels are appropriate to support the demonstration.

(c) Any application for the renewal of 401 KAR 5:055, Section *7(4)* [8(5)], variance shall include only such information described in paragraphs (a) and (b) of this subsection and 401 KAR 5:075 as the director requests within sixty (60) days after receipt of the permit application.

(d) The director will promptly notify *the Secretary of the U.S. Department of Commerce and the Secretary of the U.S. Department of the Interior and* any affected state of the filing of the request and will 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 such demonstrations.

(f) If an applicant desires a ruling on a 401 KAR 5:055, Section *7(4)* [8(5)], 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 director.

(4) Criteria and standards for the determination of alternative effluent limitations under this section.

(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 director that such 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 whether or not the protection and propagation of the affected species will be assured, the director 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 he deems relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such 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 such 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 whether or not prior appreciable harm has occurred, the director will consider the length of time in which the applicant has been discharging and the nature of the discharge.

[Section 5. Criteria and Standards for Best Management Practices. (1) Purpose and scope. This section describes how best management practices (BMPs) for ancillary industrial activities under CWA Section 304(e) (33 U.S.C. Section 1314(e)) will be reflected in permits, including best management practices promulgated in effluent limitations under CWA Section 304 (33 U.S.C. Section 1314) and established on a case-by-case basis in permits. Best management practices authorized by CWA Section 304(e) (33 U.S.C. Section 1344(e)) are included in permits as requirements for the purposes of the KPDES regulations.]

[(2) Definition. "Manufacture" means to produce as an intermediate or final product, or by-product.]

[(3) Applicability of best management practices. Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic in Section 6 of this regulation or any pollutant listed as hazardous under CWA Section 311 (33 U.S.C. Section 1321) are subject to the requirements of this section for all activities which may result in significant amounts of those pollutants reaching waters of the Commonwealth. These activities are ancillary manufacturing operations including: materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.]

[(4) Permit terms and conditions.]

[(a) Best management practices will be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline.]

[(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of KRS Chapter 224. In issuing a permit containing BMP requirements, the director will consider the following factors:]

[1. Toxicity of the pollutant(s);]

[2. Quantity of the pollutant(s) used, produced, or discharged;]

[3. History of NPDES or KPDES permit violations;]

[4. History of significant leaks or spills of toxic or hazardous pollutants;]

[5. Potential for adverse impact on public health or the environment; and]

[6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.]

[(c) Best management practices may be established in permits under paragraph (b) of this subsection alone or in combination with those required under paragraph (a) of this subsection.]

[(d) In addition to the requirements of paragraphs (a) and (b) of this subsection, dischargers covered under subsection (3) of this section shall develop and implement a best management practices program in accordance with subsection (5) of this section which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the Commonwealth.]

[(5)Best management practices program.]

[(a) A BMP program shall be developed in accordance with good engineering practices and with the provisions of this section.]

[(b) The BMP program shall:]

[1. Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps; and]

[2. Establish specific objectives for the control of toxic and hazardous pollutants.]

[a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the Commonwealth due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.]

[b. Where experience indicates a reasonable potential for equipment failure, natural condition, or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program shall include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;]

[3. Establish specific best management practices to meet the objectives identified under paragraph (b)2 of this subsection, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the Commonwealth;]

[4. The BMP program:]

[a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;]

[b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under KRS Chapter 224. Management practices required under the Kentucky hazardous waste regulations shall be expressly incorporated into the BMP program; and]

[c. Shall address the following points for the ancillary activities in subsection (3) of this section:]

[(i) Statement of policy;]

[(ii) Spill control committee;]

[(iii) Material inventory;]

[(iv) Material compatibility;]

[(v) Employee training;]

[(vi) Reporting and notification procedures;]

[(vii) Visual inspections;]

[(viii) Preventive maintenance;]

[(ix) Housekeeping; and]
[(x) Security.]

[(c) 1. The BMP program shall be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the director will approve or modify the program in accordance with the requirements of this regulation. The BMP program as approved or modified will be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of 401 KAR 5:075 resulting in the incorporation of the program, including any modifications of the program resulting from the permit issuance procedures into the final permit.]

[2. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the director for approval. If the director approves the proposed BMP program modification, the permit will be modified in accordance with 401 KAR 5:075, provided that the director may waive the requirements for public notice and opportunity for hearing on such modification if the director determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one (1) year after permit issuance, modification, or revocation and reissuance unless the director specifies a later date in the permit.]

[(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the director upon request.]

[(e) The owner or operator of a facility subject to this regulation shall amend the BMP program in accordance with the provisions of this regulation whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the Commonwealth.]

[(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this subsection, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.]

Section 5. [6.] Toxic Pollutants. References throughout the KPDES regulations establish specific requirements for discharges of toxic pollutants. The following listing identifies those toxic pollutants required to be considered for each of these KPDES requirements:

(1) Acenaphthene.
(2) Acrolein.
(3) Acrylonitrile.
(4) Aldrin/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 dichlorobenzenes).
(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 ethers, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis(chloroethyoxy) methane and polychlorinated diphenyl ethers).
(38) Halomethanes (other than those listed elsewhere; includes methylene chlorid methylchloride, methylbromide, 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 (PCSs).
(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 6. [7.] Date of Applicability. The provisions of

this regulation shall become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033(19), (20), 224.034, 224.060, 224.073
PURSUANT TO: KRS 13.082, 224.033(17)
NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075 and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required by 401 KAR 5:060, Section 1 to have a permit except for publicly owned sources and sources permitted under a general permit issued under 401 KAR 5:055, Section *5* [6].

Section 2. Definitions. The following definitions described terms used in this regulation. Terms not further defined in this regulation have the meaning given by KRS 224.005 or, if not defined, the meaning attributed by common use.

(1) "Agriculture operation" means operations that use confined feeding in livestock or livestock-byproduct production with manure handling facilities that qualify as concentrated animal feeding operations in accordance with 401 KAR 5:050.

(2) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(3) "Large non-publicly owned treatment work [(POTW)]" means facilities which [either] discharge a design flow rate greater than or equal to *10,000* [1,000,000] gallons per day [, or receives greater than or equal to 50,000 gallons per day] of [industrial process] wastewater *containing only conventional pollutants.*

(4) "Major industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, *but not limited to,* resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate greater than or equal to *50,000* [1,000,000] gallons per day of process wastewater containing [a mix of] "conventional," "nonconventional," *or* [and] thermal pollutants. *A "major industry" designation, as defined in this regulation, is not a criteria for classification as a major facility, as defined in 401 KAR 5:050.*

(5) "Minor industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, *but not limited to,* resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate less than *50,000* [1,000,000] gallons per day of process wastewater containing [a mix of] "conventional," "nonconventional," *or* [and] thermal pollutants. *If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a "major industry."*

(6) "Non-conventional pollutant" means all pollutants not considered to be a "conventional pollutant" as defined in this regulation and including priority pollutants indentified in Section 13 of 401 KAR 5:060.

(7) "Non-process industry" means industries that generate and discharge *only* non-process wastewater while engaged in commercial activities including manufacturing, resource recovery, products distributions, and wholesale and retail trade. These industries discharge [a design flow rate less than 10,000 gallons per day of] non-process wastewater, for example, non-contact cooling or stockpile run-off, and discharge wastewater that neither contains nor *is* [are] likely to contain toxic *pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration (LC) for fifty percent (50%) mortality (96 hr. LC 50) for a representative indigenous aquatic organism* [materials]. If any of the above conditions is not met, then the discharge is considered to be a "minor industry."

(8) "Small non-publicly owned treatment work [(POTW)]" means facilities which [either] discharge a design flow rate less than *10,000* [1,000,000] gallons per day [, or receive less than 50,000 gallons per day] of [industrial process] wastewater *containing only conventional pollutants. If the facility does not qualify under this definition then the facility shall be considered to be a "large non-publicly owned treatment work."*

(9) "Surface mining operation" means *only* those facilities required to have a permit by 405 KAR Chapters *7 through 26* [16] *and would not qualify as a "non-process industry" or "minor industry" or "major industry."*

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to discharge from a wastewater treatment unit will be assessed a filing fee in the amount of twenty (20) percent of the base fee in Section 4(2)(a) of this regulation.

(2) Any owner or operator who submits an application for a variance will include with the application a filing fee in the amount of the base fee in Section 6(2)(a) of this regulation.

(3) A filing fee is not refundable if a discharge permit or variance application to which it is related is denied or withdrawn.

(4) The filing fee will be applied toward the discharge permit or variance fee assessed respectively in Section 4 and 6 of this regulation.

Section 4. Discharge Permit Fees. (1)(a) Every owner or operator who is issued a discharge permit shall be assessed a discharge permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the discharge

permit can be issued, under 401 KAR 5:075, Section 11, the cabinet will notify the applicant and send a bill for the discharge permit fee. The discharge permit will be issued by the cabinet upon receipt of the total amount of the permit fee less the filing fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(c) Facilities which fall into multiple categories as specified in Section 2 of this regulation shall be assessed the highest fee.

(2) Each discharge permit fee will be determined by adding the base fee in paragraph (a) of this subsection *to* [with] all other applicable component fees listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a discharge permit for any point source water pollutant shall depend on the type of wastewater treatment unit or facility and the required permit action. The amount of the base fee will be assessed according to the following schedule:

Facility Category	1st Issuance and Renewals New and Existing Facilities
Major industry	$*800* [1,000]
Minor industry	*500* [400]
Non-process industry	*300* [100]
Large non-POTW	*400* [300]
Small non-POTW	*200* [100]
Agriculture	200
Surface mining operation	50

(b) Component fees. The component fee for each addition necessary to complete the evaluation of the discharge permit shall be as follows:

1. Redraft permit based on agencies' comments . . $ 80.
2. Public hearing and 33 USC Section 1311 variances . . . . . $325.

(3) The provisions of this section will apply with respect to fees for temporary discharge permits except that the fee as determined by subsection (2) of this section will be multiplied by the ratio of the length of time covered by the temporary discharge permit to five (5) years.

Section 5. Duplicate Discharge Permit Fee. Upon application for the issuance of a duplicate discharge permit, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen (15) dollar fee.

Section 6. Variance Fee. (1) Any owner or operator granted a variance by the cabinet shall be assessed a variance fee. Upon determining that the variance can be granted, the cabinet shall notify the applicant and send a bill for the variance fee. Failure by the applicant to pay the variance fee on or before the due date shall result in the forfeiture of the filing fee and denial of the variance. The variance shall be granted by the cabinet upon receipt of the total amount of the variance fee less the filing fee.

(2) Variance fees shall be determined by adding the base fee in paragraph (a) of this subsection with the component fee, if applicable, listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a variance for any point source water pollutant shall be equal to $270, the cost of reviewing the feasibility of the variance request reviewing the applicant's plan of study for the hydrologic-water quality investigation, assessment, or appraisal.

(b) Component fee. The component fee for completing an evaluation of a variance request shall be equal to $690, the cost of a technical review of the study data, results, and conclusions, and for making the variance recommendation.

Section 7. Terms of Payment. (1) Payment of a discharge permit or variance fee, and a duplicate discharge permit fee, as the case may be, will be made within thirty (30) days of the billing date.

(2) Payment of a filing fee shall accompany the application for a discharge permit or variance.

(3) With respect to all fees assessed in Sections 3, 4, 5, and 6 of this regulation, payment, if mailed, should be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

Section 8. Date of Applicability. The provisions of this regulation will become effective upon the date of program approval.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 4 p.m.

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

405 KAR 7:050. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, 224.071, 350.020

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.020

NECESSITY AND FUNCTION: KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs the department to adopt whatever regulations are found necessary to accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservior, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because such facilities are not otherwise adequately regulated. This regulation provides, among other things, for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This regulation applies to all coal processing waste disposal sites, whether dams, waste

impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1) Within sixty (60) days of September 21, 1982, operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the department regional office:

(a) All existing information currently available to the operator or owner including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site including moisture content and particle size gradation. This shall also include copies of plans submitted to and/or approved by MSHA. If such plans submitted to MSHA include all of the information required by this paragraph, then submittal of copies of such plans shall suffice. Where information required by this paragraph has already been submitted to the department as a part of a permit application, the operator or owner shall so notify the department regional office in writing and need not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility as applicable, including a map showing the location of the facility.

(2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner. However, on a case-by-case basis, at any time, the department may require the operator or owner to submit such additional plans and analyses or to conduct such investigations and testing of materials as necessary to determine the stability of the facility where failure of the facility could cause damage to life or property or injurious effects on the environmment of the Commonwealth. This may include, but is not limited to, seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with either 405 KAR 1:210 or 405 KAR 3:180.

(2) All other coal processing waste disposal sites shall comply with 30 CFR 77.214 *as amended at 36 Fed. Reg. 13,143 (1971)* and 30 CFR 77.215 *as amended at 40 Fed. Reg. 41,776 (1975)*, provided, however, no facility shall be constructed in such manner that it may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facililty.

(3) Those portions of structures that have already been constructed and structures that have been completed need not be reconstructed except where reconstruction is determined by the department to be necessary to ensure stability of the facility in order to eliminate potential hazards to life or property or to prevent injurious effects on the environment of the Commonwealth.

(4) Nothing in this regulation shall be construed as relieving an operator from the obligation to comply with any other provision of this Title, including, but not limited to, compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites may be required by the department to revise the facility design and/or to implement such remedial measures as necessary to comply with Section 3 of this regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified registered professional engineer or by qualified persons under the engineer's supervision and the facility shall be certified within two (2) weeks of each inspection by the responsible qualified registered professional engineer as having been constructed in accordance with the design approved by the department. Where the department has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

ELMORE C. GRIM, Commissioner
ADOPTED: March 7, 1983
APPROVED: JACKIE SWIGART, Secretary
RECEIVED BY LRC: March 7, 1983 at 4 p.m.

Proposed Amendments

REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 1:010. Protests and appeals.

RELATES TO: KRS 131.110, 131.340, 131.345, 131.360, 131.370, 139.760, 139.980(4)
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation summarizes significant portions of the statutes dealing with taxpayer protest and appeal rights and outlines procedures to facilitate the filing, processing and disposition of such protests and appeal.

Section 1. Protest—Assessments. (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, must be made within thirty (30) days from the date of the notice of tax due.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The protest shall be filed with the [Department of] Revenue *Cabinet* within thirty (30) days from the date of notice.

(3) A hearing may also be requested. The taxpayer may appear in person or by representative. If a taxpayer is not present in person, or if a corporation is not represented by an authorized officer, the *cabinet* [department] may require the taxpayer's representative to furnish evidence of his authority to act for the taxpayer. Consideration will be given to additional information presented in the protest and at hearings and the additional assessment may be adjusted accordingly.

Section 2. Protests—Refund Denials. (1) Taxpayers will also be notified by mail of disallowance or partial disallowance of any refund claim including a refund requested upon any return.

(2) A taxpayer may protest such disallowance or partial disallowance by written protest filed with the [division director, Department of] Revenue *Cabinet*, within thirty (30) days of the disallowance. Procedures governing protests and hearings for refunds are the same as for assessments.

Section 3. Final Ruling. If the taxpayer's protest of an assessment or refund denial cannot be resolved through correspondence and/or conferences with officials of the [Department of] Revenue *Cabinet* and he desires to exercise his rights of further appeal, *the taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements* [a final ruling will be issued by the Department of Revenue]. The final ruling shall be given to the taxpayer within thirty (30) days from the date the request is received by the *cabinet* [department. The final ruling shall be given to the taxpayer over the signature of the director of the division administering the tax with the approval of the Commissioner of Revenue].

Section 4. Appeal—Kentucky Board of Tax Appeals. (The following procedure is prescribed by rules and regulations of the board): (1) If a taxpayer desires to appeal a final ruling of the *cabinet* [department] he may, within thirty (30) days from the date of such ruling, apply for a hearing before the Kentucky Board of Tax Appeals. The appeal:

(a) Must be filed in *quintuplicate* [duplicate];

(b) Must contain a brief statement of the law and facts in issue;

(c) Must state the petitioner's position regarding the law, facts, or both; *and*

(d) Must contain a copy of the final ruling of the *cabinet.* [department; and]

[(e) may contain a request for hearing.]

(2) The board will set a date for a formal hearing. The hearing procedure before the board will be in accordance with the board's rules.

(3) On the basis of the hearing, briefs, and other documents, the board will issue a written order which will affirm, reverse, modify or remand the final ruling, and will forward a copy of the order to the taxpayer and the *cabinet* [department]. Assessments upheld by the board shall be due and payable thirty (30) days after the date of the board's order. In the absence of appeal, penalties for failure to pay tax when due apply if payment is not made within thirty (30) days after the date of the board's order.

(4) Interest from the original due date of the return until the tax is paid shall be added to the additional assessments.

Section 5. Appeal—Circuit Court. *Any party aggrieved by a final order of the Kentucky Board of Tax Appeals may, within thirty (30) days after such order becomes final, file a notice of appeal with the Kentucky Board of Tax Appeals and shall serve a copy of said notice upon all other parties to the appeal. A statement of appeal must then be filed within thirty (30) days after the date on which the notice of appeal was filed with the appropriate circuit court, with a copy of the ruling made before the Kentucky Board of Tax Appeals. The statement of appeal must conform to that required to be filed in the Kentucky Supreme Court.* [Any party aggrieved by a final order of the Kentucky Board of Tax Appeals, may, within thirty (30) days after such order becomes final, file a petition of appeal on any question of law to the Franklin Circuit Court or to the circuit court of the county in which the aggrieved party resides or conducts his business. A copy of the petition of appeal shall be filed with the board and all other parties against whom the appeal is prosecuted.]

Section 6. Appeal—Kentucky Court of Appeals and Kentucky Supreme Court. Any party may appeal to the Kentucky Court of Appeals and to the Kentucky Supreme Court under rules provided by those courts.

RONALD G. GEARY, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alex W. Rose, Commissioner, Department of Professional and Support Services, Capitol Annex Building, Frankfort, Kentucky 40620.

REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 8:060. Unclaimed pari-mutuel tickets; records; redemption.

RELATES TO: KRS 393.095
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation relates to race tracks operating in Kentucky *which* [who] have unclaimed pari-mutuel tickets and states how these tickets may be redeemed *after* [once] the money has been turned over to the *cabinet* [department].

Section 1. Any person, corporation or association operating *an appaloosa or quarter horse* [a] race track or conducting *appaloosa or quarter horse* racing meets in Kentucky at which pari-mutuel or other type of betting is permitted shall maintain a separate record of each race-meeting showing the number of unclaimed winning tickets which have not been presented for collection and the sum of money being held by such person, corporation, or association to satisfy the demands of the holder of outstanding tickets. These records shall be open for inspection by duly authorized representatives of the [Department of] Revenue *Cabinet.*

Section 2. Each operator of *an appaloosa or quarter horse* [a] race track or other person conducting *appaloosa or quarter horse* racing meets in Kentucky at which pari-mutuel betting is permitted shall, within a reasonable time following the date of this regulation and not later than September 1 of each succeeding year, report to the [Department of] Revenue *Cabinet* upon forms prescribed by the *cabinet* [department] the amount of money being held to satisfy the demands of holders of unclaimed winning tickets issued two (2) years or more previous to July 1 of the year in which the report is made. Payment of such money shall be made to the [Department of] Revenue *Cabinet* in the manner prescribed by KRS 393.110.

Section 3. After payment of such funds to the [Department of] Revenue *Cabinet*, persons holding outstanding winning tickets or evidence of claims which have been issued at least two (2) years previously may claim the sum due them by: (i) presenting such tickets or evidence of claims to the operators of the *appaloosa or quarter horse* race tracks at which the tickets were issued; or (ii) presenting the tickets or evidence of claims to the [Department of] Revenue *Cabinet* at Frankfort, Kentucky. The operators of such tracks shall in either case certify to the [Department of] Revenue *Cabinet* the validity of any unclaimed ticket or claims thus presented, together with a sworn statement that the ticket or claim has not been paid. The [Department of] Revenue *Cabinet* shall thereupon make payment of the holder of the ticket or claim in accordance with the provisions of KRS 393.140.

Section 4. Where a claimant, between the date of reporting and the date of remittance, presents a valid unclaimed winning ticket to the person, corporation, or association operating *an appaloosa or quarter horse* [a] race track, the operators of the race track shall pay the claim to the claimant directly. Whereupon, the operator of the track shall require an affidavit of the claimant stating that he has claimed and received payment of the proceeds of the claim. This affidavit shall be a part of the permanent records of the person, corporation, or association operating the *appaloosa or quarter horse* race track which shall, at the time the proceeds of unclaimed tickets are turned over to the [Department of] Revenue *Cabinet* execute an affidavit covering all payments previously made by the race track operator on unclaimed tickets. This affidavit shall relieve the person, corporation, or association operating the race track from liability to the [Department of] Revenue *Cabinet* for the amount so paid claimants.

Section 5. Nothing herein contained shall be construed to exempt from compliance with this regulation any person, corporation, or association conducting *appaloosa or quarter horse* racing meets in which any or all of the proceeds derived therefrom are expended for education or charitable purposes.

RONALD G. GEARY, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alex W. Rose, Commissioner, Department of Professional and Support Services, Capitol Annex Building, Frankfort, Kentucky 40620.

REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 15:050. Filing dates and extensions.

RELATES TO: KRS 141.042, 141.170, 141.300
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation is specifically required by KRS 141.042 and 141.300 to provide filing dates and extensions for declarations of estimated income tax for income tax returns.

Section 1. Filing Dates. Income tax returns must be filed with the [Department of] Revenue *Cabinet* by the fifteenth day of the fourth month following the close of the taxable year unless an extension of time is granted. If the due date is Saturday, Sunday, or a legal holiday, the due date is the next business day. If the envelope bearing the return is postmarked on or before the due date, late filing penalties will not apply.

Section 2. Extensions: *Individual* Income Tax Returns. The *Cabinet* [department] is authorized to grant extensions of time for filing income tax returns. *Individual* taxpayers may obtain extensions by either of the following methods:

(1) Specific request. Taxpayers may file extension requests with the *Income Withholding Tax Section, Department of Processing and Enforcement, Kentucky Revenue Cabinet, Post Office Box 1190, Frankfort, Kentucky 40602* [Income Tax Division, Kentucky Department of Revenue, Frankfort, Kentucky 40601], before the due date of the return. Extension requests must contain the reasons for the request. Upon approval, taxpayers will be notified by mail. A copy of the approved extension must be attached to the return when it is filed. Extensions requested under this method are automatically granted for six (6) months (twelve (12) months for individuals outside the United

States). *Statutory interest shall be paid from the original due date until the tax is paid.*

(2) Federal extensions. Taxpayers will be granted the same extension of time for filing Kentucky income tax returns as they are granted for filing federal income tax returns. A specific request to the *cabinet* [department] is not required, under this method, but a copy of the federal extension approval(s), or request for an automatic extension must be attached to the return when it is filed. Extensions requested under this method are only for the extension period(s) granted by the Internal Revenue Service and are not automatically granted for six (6) months. Tax due plus statutory interest must be paid from the normal due date until the return is filed. Failure to file and pay the tax by the extended due date will result in late filing penalties.

Section 3. Extensions: *Individual* Declaration. An application for an extension of time for filing a declaration of estimated income tax shall be filed with the *Individual Withholding Tax Section, Department of Processing and Enforcement, Kentucky Revenue Cabinet, Post Office Box 1190, Frankfort, Kentucky 40602* [Income Tax Division, Kentucky Department of Revenue, Frankfort, Kentucky 40601]. The application shall contain the basis for the extension request. An extension of time for filing declarations of estimated tax will be granted only under exceptional circumstances. If approved the extension will be granted for thirty (30) days from the normal due date. The approval also extends the time for paying installments of estimated tax for thirty (30) days.

Section 4. Extensions: Corporation Income and License Tax Returns. A corporation may file an extension request with the Corporation Income Tax Section, Department of Processing and Enforcement, Kentucky Revenue Cabinet, Post Office Box 1307, Frankfort, Kentucky 40602. The extension request must be filed on or before the due date of the return and ninety percent (90%) of the income tax due for the taxable year must be paid by that date. Payment includes credit(s) for declaration payment(s) or overpayment(s) of prior taxable year(s) credited to the current taxable period. A copy of an approved extension will not be returned to the corporation, but a copy of the extension request must be attached to the return when it is filed. Under the provisions of KRS 141.170, the cabinet is not authorized to grant an extension of time for filing a corporation income tax return unless the taxpayer both files the extension request on or before the return due date and also prepays at least ninety percent (90%) of the income tax due for the year by such return due date. Failure to comply with either of these requirements may require application of the penalty imposed by KRS 141.990(2). Any penalty assessed shall not apply to amounts paid on or before the original due date of the return. Statutory interest shall be paid from the original due date until the tax is paid. A timely extension request is automatically an extension for filing the corporation license tax return for the same taxable year. The corporation is not required to prepay the license tax to obtain a license tax extension. If an extension is invalid for income tax purposes, this will not invalidate the extension for license tax. A corporation may elect to pay the license tax due when an extension is requested. Tax due plus interest shall be paid from the due date until the license tax return is filed and payment submitted. Corporations which are members of a consolidated group or affiliates of another corporation must each file separate extension requests.

Section 5. Extensions: Corporation Declarations. An application for an extension of time for filing a corporation declaration of estimated income tax shall be filed with the Corporation Income Tax Section, Department of Processing and Enforcement, Kentucky Revenue Cabinet, Post Office Box 1307, Frankfort, Kentucky 40602, and shall contain the basis for the extension request. An extension of time for filing a declaration of estimated tax will be granted only under exceptional circumstances. If approved, the extension will be granted for thirty (30) days from the normal due date. The approval also extends the time for paying installments of estimated tax for thirty (30) days.

RONALD G. GEARY, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 2 p.m.
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 26:050. Common carriers.

RELATES TO: KRS 139.090, 139.120, 139.190, 139.470, *139.480*
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving common carriers.

Section 1. All tangible personal property sold to or used by common carriers in this state shall be subject to application of the sales or use tax *with the exceptions noted in Section 2 of this regulation.* Tax will be applicable to leasing arrangements, or use pursuant to leasing arrangements, whereby items of equipment (including, for example, but not limited to, such things as tires or batteries) are acquired by common carriers for utilization over extended periods of time in connection with operations. Such purchases, uses, leases, and uses pursuant to leases are subject to the exceptions and qualifications hereinafter noted.

Section 2. Excepted from application of the sales or use tax are the following:

(1) Over the road equipment, aircraft, or floating equipment which enters this state in actual use in interstate commerce at the time of entering, and is used exclusively in interstate commerce thereafter (nominal use in intrastate commerce will not affect this exception from application of tax).

(2) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives or trains, used or to be used in interstate commerce. The term "rolling stock" shall mean only that equipment designed to move on rails and used for the transportation of goods or passengers for hire.

(3) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property for hire (nominal use in intrastate

commerce will not affect this exception from application of tax).

RONALD G. GEARY, Secretary
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 28:010. Admissions.

RELATES TO: KRS 139.100, 139.110, 139.120, 139.130, 139.140, *139.482, 139.495*
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to sale of admissions.

Section 1. The gross receipts from the sale of admissions to places of amusements or entertainment are subject to tax. If the tax is included in the total price, a statement must appear on the ticket to the effect that the sales tax is included in such price unless the tax is separately stated in a sign posted in a conspicuous place in the ticket window and all sales are made at the ticket window. Each admission is a separate sale.

Section 2. Places of amusement or entertainment include, but are not limited to, theatres, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fairgrounds, race tracks, baseball parks, football stadiums, street fairs, dance halls, cabarets, night clubs, art exhibits and gymnasiums.

Section 3. Swimming pools and skating rinks will be governed by the following rules: If a swimming pool or skating rink makes a separate charge for which the person charged can only be a spectator, such a charge is subject to the sales tax. If, however, the charge is for the privilege of using the swimming pool or skating rink, the tax will not apply.

Section 4. Admissions to race tracks upon which tax is levied under KRS 138.480, *admissions to historical sites defined in KRS 139.482 and admissions sold by nonprofit charitable and educational institutions qualifying for exemption under KRS 139.495* are not subject to the sales tax.

RONALD G. GEARY, Secretary
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 30:190. Interstate and foreign commerce.

RELATES TO: KRS 139.100, 139.150, 139.260, 139.340, 139.400, 139.470, *139.486, 139,487, 139.488*
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to sales in interstate and foreign commerce.

Section 1. The purpose of this regulation is to state generally the application of the Commerce Clause of the Constitution of the United States to the Sales and Use Tax Law.

Section 2. Sales Tax: Transactions Consummated in Kentucky. (1) Where tangible personal property is located in this state at the time of its sale (or is subsequently produced in this state), and then delivered in this state to the purchaser, the seller is subject to the sales tax if the sale is at retail and is consummated in Kentucky. A sale is not presumed to be made in interstate commerce if the purchaser or his representative receives physical possession of such property in this state. This is true notwithstanding the fact that the purchaser may after receiving physical possession of the property in this state transport or send the property out of the state for use outside the state or for use in the conduct of interstate commerce.

(2) The sales tax does not apply to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods sold from a point in this state to a point outside this state, not to be returned to a point within this state, provided that such delivery is actually made. The tax does not apply to gross receipts from sales in which the seller, under the terms of his agreement with the purchaser, delivers the goods by carrier or by mail from a point in this state to a point outside this state not to be returned to a point within this state.

(3) The sales tax does not apply to gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to an out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(4) The sales tax does not apply to gross receipts from sales of property sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States.

(5) The sales tax does not apply to gross receipts from sales of industrial machinery as defined by KRS 139.486 when such machinery is delivered to a manufacturer or processor, or their agent for use out of state. Industrial machinery will be presumed for sale, use, storage or consumption out of state if:

(a) Delivery is to a common carrier, whether chosen by the seller or by the purchaser, and whether F.O.B. seller's shipping point or F.O.B. purchaser's destination, provided

the shipping document indicates delivery to a location outside the state; or

(b) Delivery is made by seller's own transportation vehicles to a location outside the state.

(6) [(5)] To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state under the terms of an agreement with the purchaser, the seller will be required to retain in his records documentary evidence which satisfies the *cabinet* [department] that there was such an agreement and a bona fide delivery outside this state of the property which was sold.

Section 3. Use Tax: Transactions Consummated Outside Kentucky. (1) The use tax applies to sales consummated outside Kentucky when the tangible personal property sold is shipped to the purchaser in this state. Examples of such transactions include:

(a) An order for goods is completed and accepted (consummated) outside Kentucky and the seller's branch office or other place of business in this state is utilized in any way, such as in receiving the order, distributing the goods, and/or billing for the merchandise, or

(b) An order for goods is given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance, or

(c) An order for goods results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

(2) The use tax applies with respect to any tangible personal property purchased for storage, use or other consumption in this state, the sale of which is exempt from sales tax under this regulation, except property not subject to the sales or use tax or property held or stored in this state for sale in the regular course of business or subsequent use solely outside this state, and except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce, prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce.

(3) "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

Section 4. The term "consummated" as used in this regulation means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.

RONALD G. GEARY, Secretary

ADOPTED: March 15, 1983

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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 31:110. Resale certificates.

RELATES TO: KRS 139.260, 139.270, 139.280, 139.290, 139.300, 139.400, 139.410, 139.420, 139.430, 139.440, [139.490,] 139.760, 139.990

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation describes and illustrates a certificate for use to avoid payment of sales tax on nontaxable purchases for resale. It also defines and clarifies the use of the resale certificate.

Section 1. Every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in this state for the purpose of resale. The certificate must be taken in good faith from a person engaged in selling tangible personal property who at the time of purchase, either intends to sell the property in the regular course of business, or cannot, at the time of the purchase, ascertain whether it will be sold or not. The certificate shall be of two (2) types:

(1) "Single purchase certificate" on which the purchaser must itemize the property to be purchased. A single purchase certificate may only be used for a single purchase of commodities for resale and cannot be used for subsequent purchases.

(2) "Blanket certificate" on which the purchaser is required to generally describe the kind of property to be purchased for resale in the regular course of his business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases so long as there is no change in the character of his operation and the purchases are of tangible personal property of the kind usually purchased by the purchaser for resale.

Section 2. All sales for resale which are not supported by a properly executed resale certificate shall be deemed retail sales and the burden of proving that the sale is not at retail is upon the seller.

Section 3. The certificate shall be substantially in the form prescribed below. It must include the number of the permit held by the purchaser, but if he is not required to hold a permit because he is a nonresident purchaser not required to register in Kentucky, he shall make a notation on the face of the certificate to the effect that he is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate, in all cases, must be signed by the purchaser, bear his name and address, and indicate the general character of the property sold by the purchaser in the regular course of his business. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. The following form of resale certificate is prescribed by the *cabinet* [department] pursuant to KRS 139.280 and 139.420:

☐ Blanket Certificate
☐ Single Purchase Certificate

I HEREBY CERTIFY: That I hold a valid Retail Sales and Use Tax Permit, Account No. _____, issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling _____; that the tangible personal property described herein which I shall purchase from _____ will be resold by me; provided, however, that in the event any such property is used for any purpose other *than* [that] retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay the tax measured by the purchase price of such property.

Description of property to be purchased:

_____

_____

For a Single Purchase Certificate, itemize the tangible personal property to be purchased; for a Blanket Certificate, give a general description of the kind of property to be purchased for resale in the regular course of the purchaser's business.

Purchaser _____
Address _____
Dated: _____, 19_____.
At_____

Section 5. Certificate of resale may not be used to obtain tangible personal property to be used by the purchaser and not for resale. Such use shall be grounds for the [Department of] Revenue *Cabinet* to revoke the permit of the purchaser wrongfully making use of such certificate of resale. In addition to this penalty, any person who gives a resale certificate for property knowing that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax, is subject to a fine of not less than *$250* [ten dollars ($10)] nor more than *$1,000* [$100] or imprisoned in jail for a period not exceeding thirty (30) days or both.

Section 6. *"Good faith" on the part of the seller shall be demonstrated by the seller determining that the kind of property being sold to the purchaser is normally offered for resale in the type business operated by the purchaser and that the property, if delivered by the seller, is delivered to the purchaser's business address.* The good faith of the seller is absent if he has facts which give rise to a reasonable inference that the purchaser does not intend to resell the property but instead intends it for his own use or consumption; for example, knowledge that the purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise.

RONALD G. GEARY, Secretary
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 31:120. Exemption certificates.

RELATES TO: KRS 139.490
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to the tax liability of a seller accepting exemption certificates from customers.

Section 1. The seller of tangible personal property will not include within the measure of his tax the gross receipts from a retail sale if he takes from the purchaser a "certificate of exemption" that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt under the Sales and Use Tax Law.

Section 2. The "certificate of exemption" relieves the seller from the sales and use tax only if he takes the certificate in good faith from the purchaser at the time of sale. *Good faith shall be demonstrated by the seller if he accepts a signed certificate and maintains a file of such certificate in accordance with KRS 139.720. If the cabinet later finds that the purchaser used the property in a manner that would not have qualified for tax exempt status, the cabinet shall hold the purchaser liable for the remittance of the tax and may apply any penalties as provided in KRS 139.990.*

RONALD G. GEARY, Secretary
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 31:140. Interest, penalties and compensation.

RELATES TO: KRS 131.182, 131.990, 139.570, 139.610, 139.640, 139.650, 139.710, 139.980, 139.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To summarize and interpret portions of the Sales and Use Tax Law and other chapters of the Kentucky Revised Statutes as they apply to the application of penalties, interest, and compensation.

Section 1. Interest. KRS 139.650 provides that in every case, any tax not paid on or before the due date shall bear interest at the rate *as defined in KRS 131.010(6)* [of eight percent (8%) per annum] from the due date until the date of payment.

Section 2. Penalties. (1) Civil Penalties.
(a) Failure to file (KRS 139.980): For failure to file a return or furnish information requested in writing by the

cabinet [department]; ten percent (10%) of the tax assessed by the *cabinet* [department].

(b) Late filing (KRS 139.980): For failure to make or file a return when due; five percent (5%) of tax found to be due for each thirty (30) days or fraction thereof, not to exceed twenty-five percent (25%), except in no case shall the penalty be less than ten dollars ($10), even if no tax is due.

(c) Failure to pay (KRS 139.980): For failure to pay any tax within the time required by law; ten percent (10%) of the tax due, but in no case shall the penalty be less than ten dollars ($10).

(d) Unhonored check (KRS 131.182): If any check tendered to the *cabinet* [department] is returned unhonored by the drawee bank; ten percent (10%) of the amount of the check, but in no case shall the penalty be less than ten dollars ($10) nor more than $100.

(e) Other penalties (KRS 139.980):

1. A deficiency due to negligence or disregard of rules and regulations, but without fraud; five percent (5%) of the total amount of deficiency;

2. For furnishing false or fraudulent statements; ten dollars ($10) for each instance; and

3. For failure to pay an assessment made by the *cabinet* [department] within the time prescribed; one percent (1%) of unpaid tax for each thirty (30) day period or fraction thereof until paid.

(2) Criminal penalties.

(a) KRS 139.990 imposes a fine of not less than ten dollars ($10) nor more than $100 and/or imprisonment in jail for a period not exceeding thirty (30) days for each of the following violations:

[(a) Giving a resale certificate for purpose of evading tax under this chapter;]

1. [(b)] Engaging in business as a seller in this state without a permit, and

2. [(c)] Stating or advertising that tax is being absorbed; and

3. [(d)] Failure to display use tax separate on a sales check.

(b) KRS 139.990 imposes a fine of not less than $250 nor more than $1,000 and/or imprisonment in jail for a period not exceeding thirty (30) days for each of the following violations:

1. Giving a resale certificate for purpose of evading tax under this chapter; or

2. Giving an exemption certificate for purpose of evading tax under this chapter.

Section 3. Compensation. The compensation normally allowed taxpayers to reimburse themselves for the cost of collecting and remitting the tax is not allowable on tax not paid to the *cabinet* [department] on or before the due date.

RONALD G. GEARY, Secretary
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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 40:050. Transportation.

RELATES TO: KRS 243.850
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation summarizes the statute dealing with the transportation of alcoholic beverages and outlines reporting requirements of the [Department of] Revenue *Cabinet.*

Section 1. Report Required. (1) All transporters holding a Kentucky Distilled Spirits and Wine Transporter's license or privilege are required to file reports with the [Department of] Revenue *Cabinet* on or before the *twentieth (20th)* [fifteenth (15th)] of each month covering the preceding month's transactions. It is necessary that only one (1) report, prepared on forms supplied by the [Department of] Revenue *Cabinet* be submitted to cover each unit shipment of alcoholic beverages transported into or between points in Kentucky.

(2) Reports are required on all shipments of alcoholic beverages delivered to a Kentucky wholesaler, distiller or rectifier.

(3) When a shipment is handled by two (2) or more carriers, the carrier making final delivery to the consignee or retiring the waybill is required to submit the report to the *cabinet* [department].

Section 2. Information Required. (1) Each report must show the state license number, the name and address of the consignor and the consignee, shipping date, delivery date, number of barrels and number of cases according to size for each shipment. Transporters are required to make a notation "For Consolidation" on all reports covering shipments delivered for this purpose.

(2) Each report shall be prepared and signed by an official of the transporting company.

Section 3. Report Not Required. (1) Carriers are not required to submit a report on shipments of spirits consigned by Kentucky wholesalers to Kentucky retailers; shipments of spirits delivered to some other carrier in Kentucky; shipments originating from a Kentucky wholesaler, distiller or rectifier and delivered to points outside of Kentucky; and shipments of spirits originating in some other state, transported through Kentucky and delivered elsewhere.

(2) A railroad involved in switch movement only is not considered the delivering carrier.

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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 40:100. Consumer tax; customs.

RELATES TO: KRS 243.720, 243.730
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation provides the method of collection of consumer taxes on alcoholic beverages entering Kentucky through the United States Bureau of Customs.

Section 1. Excise taxes imposed under KRS 243.720 on the use of alcoholic beverages shall be paid on all quantitites of distilled spirits, wine and malt beverages imported into Kentucky through the United States Bureau of Customs for personal consumption in this state.

Section 2. Persons desiring to secure releases of alcoholic beverages from the United States Bureau of Customs shall issue to customs authorities an acknowledgement of liability for Kentucky alcoholic beverage taxes. The acknowledgement shall be on a form prescribed by the [Department of] Revenue *Cabinet* and shall contain such information as the *cabinet* [department] may deem necessary to reasonably protect the revenues of the Commonwealth.

Section 3. The tax due pursuant to Section 1 shall be paid to the *cabinet* [department] by the importer on or before the *twentieth* [fifteenth] day of the calendar month following the month in which the beverages are imported into this state.

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REVENUE CABINET
Department of Professional and Support Services
(Proposed Amendment)

103 KAR 44:010. Usage tax.

RELATES TO: KRS 138.450, 138.460, 138.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation summarizes significant portions of the statutes dealing with the motor vehicle usage tax as administered by the [Department of] Revenue *Cabinet* and the county court clerks. [Changes made by the 1976 General Assembly are reflected in this regulation.]

Section 1. The tax imposed by KRS 138.460 applies when motor vehicles are first offered for registration in Kentucky and when vehicles are transferred. The tax at the rate of five percent (5%) shall be paid on the use in this state of every motor vehicle except those exempted by KRS 138.470.

Section 2. Value Upon Which Tax is Imposed. (1) The five percent (5%) motor vehicle usage tax shall be computed on the "retail price" as defined in KRS 138.450. In the case of trucks of gross weight in excess of 10,000 pounds the tax shall be levied upon ninety percent (90%) of the retail price. *A sworn report of vehicle values must be submitted by the owner with the application for registration or transfer.* [The "Motor Vehicle Usage Tax Return" provides an itemized sworn statement of vehicle values and must be submitted with the application for registration or transfer.]

(2) For new passenger cars the retail price shall be determined as follows:

(a) The factory A.D.P. (advertised delivery price) [as shown in the "N.A.D.A. Official Used Car Guide"] or the port of entry price on imports, *or a value furnished by the Revenue Cabinet if such prices are not available*; plus

(b) The factory A.D.P. *or port of entry price* of optional equipment installed by manufacturer, *distributor,* or dealer. (Total price of optional equipment must agree with manufacturer's price label required by KRS 138.460(6)); plus

(c) Transportation or destination charges.

(d) The taxable value is ninety percent (90%) of the total of paragraphs (a), (b), and (c) of this subsection.

(3) For new trucks, motor homes, ambulances, hearses or motorcycles, the retail price shall be determined as follows:

(a) *The sum of paragraphs (a), (b), and (c) in subsection (2) of this section;* [The factory price as shown in the prescribed automotive reference manual or furnished by the department if not shown therein; plus]

(b) *The taxable value except for new trucks of gross weight in excess of 10,000 pounds is ninety percent (90%) of the total of paragraph (a) of this subsection; and* [The factory price of optional equipment installed by manufacturer or dealer. (Must agree with manufacturer's itemized billing required by KRS 138.460(6)); plus]

[(c) Transportation or destination charges.]

[(d) The taxable value is ninety percent (90%) of the total of (a), (b), and (c).]

(c) [(e)] In the case of new trucks of gross weight in excess of 10,000 pounds, the tax shall be levied on *eighty-one percent (81%) of paragraph (a) of this subsection* [ninety percent (90%) of the taxable value].

(4) For used passenger cars, *trucks, motor homes, hearses, ambulances or motorcycles* previously registered in any state *or country,* the retail price shall be determined as follows: The average retail price as shown in the *prescribed automotive price reference manual or a value furnished by the Revenue Cabinet,* ["N.A.D.A. Official Used Car Guide,"] plus all optional equipment; minus the trade-in allowance prescribed in KRS 138.450 if applicable.

[(5) For used trucks, motor homes, hearses, ambulances or motorcycles which have been previously registered, the retail price shall be determined as follows: The average retail value in the prescribed automotive reference manual or furnished by the department; plus all optional equipment, minus the trade-in allowance prescribed in KRS 138.450 if applicable.]

(5) [(6)] For older model motor vehicles whose values are no longer listed in the *prescribed automotive price reference* [price] manual, "retail price" shall be determined as follows:

(a) One (1) year removed from *the* manual the retail price shall be seventy-five percent (75% of the value last appearing in *the* manual.

(b) Two (2) years removed from *the* manual the retail price shall be fifty percent (50%) of *the* value last appearing in the manual.

(c) Three (3) years removed from *the* manual the retail price shall be twenty-five percent (25%) of *the* value last appearing in *the* manual.

(d) For all others the retail price shall be ten percent (10%) of the value last appearing in the manual with the minimum retail price being $100.

(6) [(7)] *The owner of a wrecked motor vehicle may obtain a reduced taxable valuation for such vehicle upon first registration of or transfer of ownership in this state. Pursuant to KRS 138.450(5), "wrecked motor vehicle" means any motor vehicle damaged by any cause except wear and tear or rust including but not limited to damage caused by collision, fire, flood, wind or vandalism. Any other provision of KRS 138.450(4) notwithstanding, the retail price of a wrecked motor vehicle shall be the lesser of fifty percent (50%) of the retail price as determined without reference to this subsection, or such retail price minus the average of the repair estimates submitted to the county clerk. The owner of the wrecked motor vehicle shall obtain a minimum of two (2) repair estimates from disinterested persons regularly engaged in the repair of motor vehicles and submit them to the county clerk.* [If an owner of a wrecked vehicle demands a value less than the retail price as defined in KRS 138.450, he may request an appraisal of the vehicle. The county clerk shall direct the owner of the vehicle to the Department of Revenue District Office that serves the county in which the vehicle is to be transferred. The manager of the district office will assign a field representative to make the appraisal within fifteen (15) days from the date the request is received. No appraisal will be made on a vehicle after repairs are begun or after the vehicle has been transferred.]

(7) [(8)] In the case of used motor vehicles previously registered in this state, which are sold in this state, a trade-in allowance equal to the "retail price" of the vehicle taken in trade shall be deducted in computing the "retail price" of the vehicle sold.

(8) [(9)] Notwithstanding the provisions of KRS 138.450, in no case shall the tax be less than five dollars ($5) upon first registration of or any transfer of ownership of a motor vehicle in this state, except those exempted from tax under KRS 138.470.

(9) [(10)] Motor vehicles used as dealer demonstrators for a reasonable length of time should have a lower taxable value than the value obtained for new motor vehicles. The lower valuation should be determined as follows: The dealer will complete an affidavit in duplicate that will indicate the amount of demonstrator time, the number of miles driven as shown on the odometer and the average retail price as shown in the N.A.D.A. Guide or other reference manual. If the retail price of the vehicle is not given in the current guide, the retail price will be no less than seventy-five percent (75%) of the vehicle's window sticker price. If the actual selling price of the vehicle is greater than seventy-five percent (75%) of sticker price, the actual sale price shall be inserted on the affidavit. Demonstrators have not been previously registered and are considered new motor vehicles. The tax will be computed at five percent (5%) of ninety percent (90%) of the retail value. Dealer demonstrators that are not sold in the current model year will be valued by the average retail value plus optional equipment as shown in the January issue of the reference manual following the model year and the tax computed at five percent (5%) of ninety percent (90%) of that value.

(10) [(11)] New motor vehicles of a year model preceding the current year model should have a lesser value for usage tax purposes. After new models are offered for sale by local dealers, a discount of ten percent (10%) may be allowed from the taxable value as shown on the motor vehicle usage tax return.

Section 3. Computation of Tax. The total taxable value as *determined under the provisions of this regulation* [shown on the "Motor Vehicle Usage Tax Return"] shall be entered on the Certificate of Registration and [Title or Transfer Certificate of Registration and Title and] the five percent (5%) tax rate applied to determine the amount of tax due.

Section 4. Credit for Tax Paid to Other States. When a motor vehicle, formerly registered in another state is offered for registration in Kentucky for the first time, the owner of such vehicle shall be entitled to receive a credit equal to the amount of tax paid to the state of previous registration against the tax levied under KRS 138.460, provided that the state to which the tax was paid provides a similar credit for substantially identical taxes paid in Kentucky. The [Department of] Revenue *Cabinet* shall furnish county clerks with a list of states granting similar credit. "Similar taxes" do not include property tax or registration fees paid to another state but do include sales tax, use tax, usage tax or other excise taxes. Any person claiming a credit for tax paid on a motor vehicle to another state must comply with the following:

(1) The applicant for registration must prove that he paid a tax similar to Kentucky's motor vehicle usage tax to another state on the vehicle being offered for registration. Payment of the tax by any previous owner will not suffice. The payment must be proved by a receipt or affidavit from an official in the other state authorized to give such receipt or affidavit, or a receipt issued by the seller of the motor vehicle, showing the date and the amount of tax paid, description of the vehicle, name of purchaser, and in the case of a receipt, must be signed by the public official or seller of the vehicle as the case may be. A similar tax includes a general or selected sales and use tax imposed by the other state.

(2) The tax claimed as a credit must have been paid to a state which grants credit for similar taxes paid to Kentucky. From time to time, the clerks will be furnished a list of the states which qualify. When credit is claimed, the clerk should first check this list to see if that state is listed. If it is not listed, no credit against the motor vehicle usage tax may be given. Kentucky military personnel on active duty are entitled to credit against the motor vehicle usage tax imposed under KRS 138.460 for a similar tax paid to any state on the same motor vehicle. This policy applies only to military personnel.

(3) If a motor vehicle usage tax due under KRS 138.460 is greater than the tax paid to another state that qualifies, the clerk should collect the difference upon registering the vehicle. If the tax paid to another state that qualifies is equal to or greater than the tax due under KRS 138.460, only the appropriate registration and clerk's fees should be collected upon registering the vehicle.

Section 5. *Within ten (10) calendar days after the close of each calendar week, the county clerk shall report to the Revenue Cabinet all moneys collected during the calendar week covered by the report together with a duplicate of all receipts (certificates of registration) issued by him during the same period. The clerk shall deposit motor vehicle*

usage tax collections not later than the next business day following receipt in a Commonwealth of Kentucky, Revenue Cabinet, account in a bank designated as a depository for state funds. Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed. Failure to deposit collections as required in this section shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited for each day until the collections are deposited as required in this section. The penalty for failure to deposit shall not be less than fifty dollars ($50) nor more than $500 per day. The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause. The cabinet may in its discretion grant a county clerk a reasonable extension of time to file his report or make deposits as required in this section. The extension, however, must be requested in writing prior to the due date of the report as provided herein. All penalties collected under this provision shall be paid into the state treasury as a part of the revenue collected under KRS 138.450 to 138.729. [Weekly Reports by County Clerks: The law requires each county court clerk to make a weekly report on Monday covering business of the previous week and to mail such report to the Department of Revenue, together with a check payable to the State Treasurer for the amount of tax due under such report, less the two and one-half percent (2½%) of the total tax which is allowed the clerk for collection. A penalty of one percent (1%) per month or fraction thereof of the amount of the tax due the Commonwealth is levied by law if payment is not delivered to the department on or before, or enclosed in an envelope postmarked on or before the second Tuesday following the Monday on which the report should be made, or if the department's copies of all receipts and usage tax returns do not accompany the county clerk's report.]

Section 6. Refund Provisions. (1) Where a new motor vehicle is sold by a dealer in this state and the original purchaser returns the vehicle *for any reason* to the same dealer within *sixty (60)* [ten (10)] days for a new vehicle replacement *or a refund of the purchase price*, the purchaser shall be entitled to a refund of the amount of usage tax received by the [Department of] Revenue *Cabinet* as a result of the registration of the returned vehicle. [The registration of the returned vehicle shall be cancelled and] The vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer. The request for refund submitted to the *cabinet* [department] shall be accompanied by *a* [the owner's] copy of the *owner's* Certificate of Registration [and Title, the license plates] and an affidavit from the dealer and the purchaser verifying the date the vehicle was returned.

(2) When a manufacturer, *because of a malfunction or defect in a vehicle sold, refunds the retail purchase price or replaces such vehicle with a new motor vehicle for the original purchaser* [replaces for the original purchaser] within ninety (90) days [a new motor vehicle because of a malfunction or defect], the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the [Department of] Revenue *Cabinet* as a result of the first registration. No person shall be entitled to a refund unless he shall have filed with the *cabinet* [department] an affidavit from the manufacturer identifying the vehicle that was replaced and *stating* the date of the replacement. *Tax as provided in this regulation shall be paid upon registration of any replacement vehicle.*

Section 7. Exemptions from the Tax. There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles sold to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles sold to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. Such motor vehicles shall not be leased, rented or loaned to any person and must be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to non-resident members of the armed forces on duty in the Commonwealth under orders from the United States Government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by non-resident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles previously registered in Kentucky, transferred between husband and wife or parent and child;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship *or from a corporation to a proprietorship, within six (6) months from the time the business is incorporated or dissolved* [when the business is incorporated];

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation when there is no consideration or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) The interest of a partner in a motor vehicle when other interests are transferred to him;

(12) Motor vehicles repossessed by a secured party who has filed a financing statement as required by KRS 186.045(2) and a repossession affidavit as required by KRS 186.045(6). The repossessor must hold the vehicle for resale only and not for personal use unless he has previously paid the motor vehicle usage tax on said vehicle; and

(13) Motor vehicles transferred to an insurance company to settle a claim. Such vehicles shall be junked or held for resale only.

RONALD G. GEARY, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alex W. Rose, Commissioner, Department of Professional and Support Services, Capitol Annex Building, Frankfort, Kentucky 40620.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.702, 78.510 to 78.852
PURSUANT TO: KRS 13.082, 16.576, 16.640, 61.559, 61.645, 78.780
NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545, require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the Kentucky Employes Retirement System (KERS), County Employes Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation earned on or after July 1, *1983* [1982], shall be as follows:

KRS 61.565 State Police Retirement System 18½%
KRS 61.656 Kentucky Employes Retirement System 7¼%
KRS 61.565 County Employes Retirement System 6¼%
KRS 61.592 Kentucky Employes Retirement System 18¼%
KRS 61.592 County Employes Retirement System ..... *14* [15]%

Section 2. The interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:
(1) For time elapsed from date of refund through June 30, 1982, six (6) percent compounded annually.
(2) For time elapsed from July 1, 1982 (or date of refund if after July 1, 1982) seven and one-half (7½) percent compounded annually. The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board shall be at the rate of zero (0) percent, if the refund is recontributed within a reasonable period of time.

Section 3. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate of six (6) percent.

Section 4. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to normal retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, below, except:
(1) A KERS hazardous duty member who is age fifty (50) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if the employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE A

Years Required to Complete 30 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A SPRS or CERS hazardous duty member who is age fifty (50) or older and [has attained twenty-five (25) years of service or] would attain twenty-five (25) years of service (for SPRS, fifteen (15) of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE B

Years Required to Complete 25 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(3) A KERS or CERS non-hazardous member who is age fifty-five (55) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 30 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(4) A KERS or CERS non-hazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on *SPRS, CERS hazardous or* KERS hazardous early retirement eligibility, and would have attained thirty (30) or more years of service (fifteen (15) of which would be current service) on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table C based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

[(5) A KERS or CERS non-hazardous member with SPRS or CERS Hazardous Service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on SPRS or CERS hazardous early retirement eligibility, and would have attained twenty-five (25) or more years of service (for SPRS, fifteen (15) of which would be current service) on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table E based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.]

TABLE E

Years Required to Complete 25 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(5) [(6)] A KERS hazardous member who dies prior to age fifty (50) and would have attained thirty (30) or more years of service (fifteen (15) or which would be current service) on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have benefits payable as determined from Table C based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

(6) [(7)] A SPRS or CERS hazardous member who dies prior to age fifty (50) and [has attained twenty-five (25) years of service or] would have attained twenty-five (25) or more years of service (for SPRS, fifteen (15) of which would be current service) on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time death.

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age 65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(7) [(8)] Benefits paid in the event of death prior to retirement pursuant to subsections (1) through *(6)* [(7)] of this section shall be reduced, as required by KRS 61.640

and as determined in "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors" incorporated herein by reference.

Section 5. Conversion factors to be applied to determine immediate annuity which could be purchased by $1,000 of contributions and interest after doubling as provided in KRS 16.576 and 61.559, effective April 1, 1982.

TABLE H

	Age	Male	Female
Non-Hazardous	65	$ 9.92141	$ 8.57730
	66	$10.19723	$ 8.77301
	67	$10.49134	$ 8.98625
	68	$10.80397	$ 9.21964
	69	$11.13655	$ 9.47497
	70	$11.48855	$ 9.75310
	71	$11.85855	$10.05393
	72	$12.24723	$10.37652
	73	$12.65979	$10.72087
	74	$13.10404	$11.08806
	75	$13.58700	$11.47901
	76	$14.11350	$11.89596
	77	$14.68390	$12.34116
	78	$15.29153	$12.81648
	79	$15.93155	$13.32415
	80	$16.60395	$13.86536
Hazardous	50	$ 7.46966	$ 6.90106
	51	$ 7.56685	$ 6.96348
	52	$ 7.67007	$ 7.03073
	53	$ 7.77991	$ 7.10321
	54	$ 7.89699	$ 7.18139
	55	$ 8.02206	$ 7.26577
	56	$ 8.15598	$ 7.35689
	57	$ 8.29982	$ 7.45528
	58	$ 8.45481	$ 7.56147
	59	$ 8.62204	$ 7.67598
	60	$ 8.80177	$ 7.79939
	61	$ 8.99462	$ 7.93237
	62	$ 9.20156	$ 8.07563
	63	$ 9.42411	$ 8.23009
	64	$ 9.66376	$ 8.39690
	65	$ 9.92141	$ 8.57730
	66	$10.19723	$ 8.77301
	67	$10.49134	$ 8.98625
	68	$10.80397	$ 9.21964
	69	$11.13655	$ 9.47497
	70	$11.48855	$ 9.75310
	71	$11.85855	$10.05393
	72	$12.24723	$10.37652
	73	$12.65979	$10.72087
	74	$13.10404	$11.08806
	75	$13.58700	$11.47901
	76	$14.11350	$11.89596
	77	$14.68390	$12.34116
	78	$15.29153	$12.81648
	79	$15.93155	$13.32415
	80	$16.60395	$13.86536

CHARLES L. BRATTON, General Manager
ADOPTED: February 17, 1983
RECEIVED BY LRC: March 10, 1983 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Main Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:020. Reciprocal program between CERS, KERS, SPRS, [and] TRS *and Legislators' Retirement Plan.*

RELATES TO: KRS 16.505 to 16.645, 61.510 to 61.700, 78.510 to 78.990
PURSUANT TO: KRS 13.082, 16.640, 61.645, 78.780
NECESSITY AND FUNCTION: KRS 61.680 was amended by the 1974 *and 1982* General Assembly to provide for an entirely new method of determining retirement benefits for public employees having a retirement account in more than one (1) of the following state administered retirement systems: County Employes Retirement System, Kentucky Employes Retirement System, *Legislators' Retirement Plan,* State Police Retirement System and Teachers' Retirement System. An administrative regulation adopted by the Board of Trustees of Kentucky Retirement Systems is necessary to implement this new legislation.

Section 1. Procedural Matters. Upon death, disability or service retirement the following procedure shall be applicable in order to determine benefits for a member having an account in more than one (1) retirement system:
(1) Combine the members' service in all systems.
(2) Determine eligibility in each system based on combined service.
(3) If eligible in any system, determine benefits.
(4) Check for specific exceptions such as prior service, request for separate account or special death or disability exception.
(5) Each system pays applicable percentage of total benefit unless specific exception.

Section 2. Service Retirement. (1) A member eligible to retire who elects service retirement from one (1) system, shall be paid from all systems in which he has an account unless he requests that his accounts be separated.
(2) The "final compensation" will be calculated by using the five (5) highest fiscal years creditable compensation regardless of the system under which the service was earned.
(3) Each system will determine benefit payments on the basis of the final compensation but using only the service earned in that system. Payments will be made by each system in accordance with its usual procedures, except where an age requirement has not been met, benefits shall be actuarially reduced based on factors adopted by the respective retirement boards.
(4) The retiring member or beneficiary will be required to elect the same payment option in each system *administered by the Kentucky Retirement Systems except that a state policeman or a member with hazardous service may select the "Ten Year for Certain" option set forth in KRS 16.576(5) irrespective of the option chosen for non-hazardous service.*
(5) A retiring member may elect to have each system treat his service credit in that system without regard to any service credit, by requesting that his accounts be separated. In such case, "final compensation" would be based on the creditable compensation earned under each system separately.

Section 3. Disability Retirement. (1)(a) If a contributing

member of one (1) of the *five (5)* [four (4)] systems qualifies for disability benefits, all systems under which the combined service would meet service requirements would participate in benefit payments (assuming accounts are not separated by provisions of KRS 61.680(2)(b)).

(b) Each system shall calculate benefits using the formula in effect in that system.

(c) Service added to County Employes Retirement System, Kentucky Employes Retirement System and/or State Police Retirement System accounts in accordance with the appropriate disability formula shall be prorated between system accounts based on a percentage of actual earned service in each system unless such proration conflicts with maximum added service permitted by law governing each system.

(2) If the combined service of a member meets service requirements in only one (1) system then that system only pays benefits under their disability formula and the other system pays as follows:

(a) Benefits based on separate accounts should the member elect to maintain separate accounts; or

(b) An actuarial accrued benefit based on the member's age, service and final compensation; or

(c) A refund if requested by the member.

(3) The medical requirements for disability benefits will be those of the system to which the member is currently contributing, if combined service meets service requirements of that system. If service requirements are met in only one (1) system, the medical requirements of that system will prevail regardless of current employment in another system.

Section 4. Death and Survivor Benefits. A member contributing to any of the *five (5)* [four (4)] retirement systems who has combined service sufficient to qualify for a death benefit will have his County Employes Retirement System, Kentucky Employes Retirement System or State Police Retirement System benefits computed under the regular death formula based on his service in each of the three (3) systems.

Section 5. Military Service. (1) A member having valid service credit in more than one (1) of the retirement systems may elect to purchase retirement credit for active duty time in one (1) system; or he may divide the service credit between the systems *permitting such purchase.* If service is to be divided, the following additional requirements must be met:

(a) The total service credit in all systems may not exceed six (6) years. Within County Employes Retirement System, Kentucky Employes Retirement System and State Police Retirement System a member may not purchase more than four (4) years active duty military service.

(b) The same years active duty may not be used in more than one (1) system.

(c) Each system will calculate the costs of such retirement credit in keeping with the statutes and regulations of that system.

(2) A contributing member of the Kentucky Employes Retirement System, County Employes Retirement System or State Police Retirement System who has service in any or all of these systems or previous service under the Teachers' Retirement System may purchase military service in the system under which he is working, either Kentucky Employes Retirement System, County Employes Retirement System or State Police Retirement System provided his total service is sufficient to meet the statutory requirement.

(3) A retired recipient who is re-employed under the system from which he retired and is making contributions to the system is eligible to purchase military service.

CHARLES L. BRATTON, General Manager
ADOPTED: February 17, 1983
RECEIVED BY LRC: March 10, 1983 at 1:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:045. Upland game birds, furbearers and small game; seasons, limits.

RELATES TO: KRS *150.010,* 150.300, 150.305, 150.330, 150.340, 150.360, 150.365, 150.370, 150.390, 150.400
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds and animals and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, animals and furbearers within reasonable limits based upon an adequate supply. This amendment is necessary to change the rabbit and quail season dates *and to permit the use of calling devices to take small game.*

Section 1. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): [opens] third Saturday in August [, continues] through October 31 *and* [. Opens again on the] third Thursday in November [, continues] through December 31.

(2) Rabbits: [opens] third Thursday in November [, continues] through *February 12* [the last day in February].

(3) Quail [(Bobwhite)]: [opens] third Thursday in November [, continues] through *February 12* [the last day in February].

(4) Grouse: [opens] third Thursday in November [, continues] through the last day in February.

(5) Furbearers: [opens] third Thursday in November [, continues] through January 31. Includes mink, muskrat, beaver, opossum, red fox, raccoon, weasel and skunk. The bobcat is protected year around and may not be trapped or killed.

(6) Traps and snares: all dry land sets are limited to No. 2 or smaller, smooth-jawed steel traps and No. 220 or smaller Conibear-type traps set no closer than ten (10) feet apart and snares without a self-locking device. Traps or snares shall not be set in trails or paths commonly used by humans and/or domestic animals.

(7) Taking raccoon and opossum: Raccoon and opossum may not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(8) Falconry hunting: the wildlife listed in this section may be pursued and taken by a licensed falconer with any legal hunting raptor from November 1 through the last hunting date listed for each species, except that squirrels may be taken starting the third Saturday in August.

(9) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices during open seasons.

Section 2. Bag and Possession Limits. [Possession limit applies to transporting after two (2) or more days shooting but does not permit double bag limit to be taken or possessed in the field.]

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail [(Bobwhite)]	8	16
Grouse [or native pheasant]	4	8
Furbearers (except raccoon by means other than trapping)	No Limits	No Limits
Raccoon (by means other than trapping)	1*	No Limits**

* One (1) per hunter, with no more than three (3) per party of three (3) or more hunters while hunting.

** No possession limit on raccoons, except that no hunter or party of hunters shall possess more than the daily bag limit while hunting in the field.

Section 3. Trapping Licenses. The following trapping licenses are required: (1) Resident landowner or tenant trapping license: This license authorizes either the landowner or his dependent children to take wild animals by trapping upon their farmlands. Either the tenant or his dependent children residing upon the owner's lands have the same privilege.

(2) Resident statewide trapping license: This license authorizes the holder thereof to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

(3) Nonresident statewide trapping license: This license authorizes the holder thereof to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

Section 4. Shooting Hours. Shooting hours *for* [on] the above species *are daylight hours only* [shall be from one-half (½) hour before sunrise to one-half (½) hour after sunset] , except for raccoon and opossum which may be taken at any time during day or night.

Section 5. Squirrel Hunting Weapons. No person [while in the act of] hunting squirrels, may use or possess a breech-loading rifle of .240 caliber or larger [, or a shotgun with slugs or buckshot]. Squirrels may be taken with any type of muzzle-loading weapon and by means of longbows or compound bows.

Section 6. Prohibited Ammunition. No person [while in the act of] hunting any of the game species listed in this regulation may have in his or her possession any buckshot or shotgun slugs.

CARL E. KAYS, Commissioner
ADOPTED: February 28, 1983

APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: March 14, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation
(Proposed Amendment)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
NECESSITY AND FUNCTION: To establish a technique for treatment of mares imported into Kentucky from any country *listed in 78 Code of Federal Regulations 92.2 as a country infected with contagious equine metritis* [outside the continental United States, its territories and possessions].

Section 1. As used in this regulation, unless the context clearly requires otherwise:

(1) "Mare" means a female horse over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies of CFM bacterium.

(4) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Any mare imported into Kentucky from any country *known to be infected with CEM* [outside the continental United States, its territories and possessions], shall, before being used for breeding, be treated by or under the direct supervision of a veterinarian licensed to practice in Kentucky, according to the following procedure:

(1) For five (5) consecutive days the veterinarian shall aseptically clean and wash external genitalia, vaginal vestibule and clitoral fossa with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the external genitalia and vaginal vestibule with an ointment of not less than two-tenths (0.2) percent nitrofurozone insuring that the clitoral fossa is filled.

(2) After the treatment, the mare shall undergo a seven (7) day rest period.

(3) Non-pregnant mares. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. He shall also collect one (1) additional sample from the endometrium of the uterus during estrus. All samples shall be submitted to a state or federal laboratory.

(4) Pregnant mares. These mares must remain on a state approved premise until all tests results are complete on both mare and foal. The veterinarian shall collect three (3) specimens from the clitoral fossa at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen

from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a state or federal laboratory for culture.

(5) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.

(6) *Imported mares bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred that day, and the stallion will be scrubbed and treated after breeding. The imported mare and the next three (3) mares bred to the same stallion will have a CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.* [All mares entering Kentucky for quarantine and testing procedures must remain in the state for breeding and results of the post-breeding CF test, which shall be taken fifteen (15) to forty (40) days after the mare is bred.]

[Section 3. This regulation shall also apply to: (1) Any mare imported into Kentucky for breeding which has at any time been present in any country outside the continental United States, its territories and possessions, for any purpose other than racing.]

[(2) Any imported mare, whether used for breeding or not, which is or will be present on a breeding facility or establishment after entering Kentucky.]

ALBEN W. BARKLEY II, Chairman
ADOPTED: February 24, 1983
RECEIVED BY LRC: February 24, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: State Board of Agriculture, Alben W. Barkley II, Chairman, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation
(Proposed Amendment)

302 KAR 20:130. Treatment of contagious equine metritis.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 13.082, 257.030
NECESSITY AND FUNCTION: Establishes the required treatment standards for equines quarantined for the purpose of controlling contagious equine metritis (CEM) within the Commonwealth.

Section 1. Definitions. (1) "High risk mare" is a mare that is culture positive and/or CF positive after being bred to an infected stallion before stallion was removed from service and treated.

(2) "Medium risk mare" is a mare that is CF negative and culture negative but bred to an infected stallion prior to treatment.

(3) "Infected stallion" is a breeding stallion proven or believed to be a carrier of the CEM organism.

Section 2. Sale and Movement of CEM Infected or Exposed Equines. No CEM high risk, medium risk or imported mares or stallions shall be sold or transported unless authorization from the state veterinarian is obtained prior to such sale or movement.

Section 3. High risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify [that] the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Post-surgical treatment (to be started no sooner than seven (7) days after surgery).

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(3) Post-treatment culture requirements (to be started no sooner than seven (7) days after treatment). Three (3) consecutive sets of negative cultures will be taken from the endometrium and clitoral fossa. These cultures taken at not less than seven (7) day intervals. One (1) endometrial culture shall be taken at estrus.

(4) Prebreeding cultures (to be taken in following year). One (1) set of cultures will be taken from the endometrium. Three (3) sets of the clitoral fossa taken no less than seven (7) day intervals.

(5) *A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying high risk mares to enter the breeding shed. High risk mares will be prophylactically scrubbed before being covered, (bred last in line) and the stallion scrubbed and treated after breeding. The high risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.* [High risk mares will require a breeding permit and must be bred last in line and the stallion scrubbed and treated after breeding.]

(6) High risk mares that do not conceive on the first heat period shall have an additional set of cultures taken in early estrus and submitted to the laboratory prior to cover for the subsequent heat period. Laboratory results need not be completed.

(7) High risk mares will not be released until they have had one (1) set of negative cultures taken after January 1st of the following year. The endometrial culture for foaling mares must be taken at not less than seven (7) days after foaling.

Section 4. Medium risk mares quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) Surgical removal of clitoral sinuses.

(a) Prior to surgery a culture will be taken from the clitoral fossa.

(b) The excised sinuses will be refrigerated and immediately submitted for culture to the Livestock Disease Diagnostic Center, Newtown Pike, Lexington, Kentucky.

(2) Pretreatment culture requirements. Following surgery three (3) negative cultures from the clitoral fossa will be required. The first not less than seven (7) days following surgery and each culture taken not less than intervals of seven (7) days (the third culture would therefore be taken no sooner than day twenty-one (21) following surgery).

(3) Treatment.

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the clitoral fossa.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally insuring filling of the clitoral fossa.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(4) Post-treatment culture requirements—cultures to be taken no sooner than seven (7) days after treatment and after January 1st of following year.

(a) Foaling mares. Three (3) cultures from the clitoral fossa at not less than seven (7) day intervals will be required. One (1) endometrial culture shall be taken no less than seven (7) days after foaling. The foal will have one (1) culture; if female, from the vaginal vestibule; if male, from the prepuce.

(b) Barren mares which qualified for breeding during current season will also have one (1) endometrial culture taken during early estrus and three (3) clitoral fossa cultures at not less than seven (7) day intervals.

(5) *A breeding permit shall be obtained from the State Veterinarian's office to allow qualifying medium risk mares to enter the breeding shed. Medium risk mares will be prophylactically scrubbed before being covered, bred last in line and the stallion scrubbed and treated after breeding. The medium risk mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.* [Medium risk mares that do not meet the above requirements for quarantine release will be treated as high risk.]

Section 5. Stallions quarantined under the provisions of KRS 257.030 shall not be released from quarantine until the state veterinarian shall certify the treatment and conditions prescribed in this regulation have been fully met and all requirements fulfilled.

(1) The following treatment must be carried out with the stallion in full erection and with the operator wearing disposable gloves and using disposable equipment:

(a) Mechanically clean the external genitalia with clean, warm water.

(b) Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and the folds of the sheath.

(c) Wash with clean, warm water and dry.

(d) Apply Furacin ointment liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.

(e) Repeat the treatment daily for five (5) days (series of five (5) treatments).

(2) The stallion may be returned to service twenty-four (24) hours after the final treatment. The first two (2) mares bred by the stallion must be cultured from the cervix, clitoral fossa and clitoral sinus on days two (2) and four (4) after being covered and each of the first two (2) mares must have a CF test for CEM performed on days fifteen (15) and twenty-five (25) after being covered.

ALBEN W. BARKLEY, II, Chairman

ADOPTED: February 24, 1983

RECEIVED BY LRC: February 24, 1983 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: State Board of Agriculture, Alben W. Barkley, II, Chairman, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

COMMERCE CABINET
Kentucky State Fair Board
(Proposed Amendment)

303 KAR 1:100. Exposition Center grounds; sale and dissemination of real property, fixtures and goods, solicitation of contributions or sales during annual State Fair; rental of space; *use of sound amplification equipment.*

RELATES TO: KRS 247.145

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: To regulate sale and dissemination of real property, fixtures and goods, [and] solicitation of contributions and sales, *and use of sound amplification equipment* on the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair in order to insure orderly movement of crowds and the safety and convenience of State Fair patrons and provide exhibitors with equal and adequate access.

Section 1. Regulation 303 KAR 1:080 will not apply to the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair.

Section 2. During the annual Kentucky State Fair, no person shall make sales or distribution of real property, fixtures or goods, including but not limited to all printed or written material, solicit for either contributions or sale, *make sales promotions or sales demonstrations,* [or] carry placards, *or post, distribute or display signs or any other printed or written materials,* except from within the confines of a booth or fixed location rented from the Kentucky State Fair Board *or, in the case of locations in the carnival midway area, from the Fair Board's lessee of the carnival midway area.*

Section 3. A rental will be charged for each booth or fixed location assigned and leased *from the Fair Board* in accordance with this regulation, and such rental shall be set according to the size, *location, and use (sales, non-sales commercial, or non-profit)* of the space assigned.

Section 4. The spaces available *from the Fair Board* for booths or fixed location will be assigned on a first-come, first-served basis after May 1 of each year, except that:

(a) The sponsor of an event during the State Fair may be authorized by his contract with the Fair Board to sell of distribute his goods specified in the contract from locations in the area of the event which are specified in the contract;

(b) The Fair Board reserves the right to limit the assignment of booths and locations in designated "theme" areas of the State Fair to applicants whose proposed design and use of the booths or locations conform to the Fair Board's specifications and theme for the respective theme areas, and, in the case of the Made in Kentucky Showcase, to applicants displaying goods of the required origin;

(c) The Fair Board reserves the right to limit to the civic midway area the number and location of vendors who will sell substantially the same items;

(d) In order to attract and maintain high-quality concessions and exhibits, the Executive Vice-President may annually, at a time on or before April 30 of each year, extend to the renters of space from the prior year's State Fair the opportunity to renew their space rental contracts for the next State Fair on the basis of a renewal for the same space, purpose, and ownership as in the prior year. Even when renewals are so offered to renters from the prior year, the Fair Board reserves the right not the renew any space rental contract where the renter has violated any regulation of the [State] Fair *Board* or any state or federal law in previous use of the booth.

Section 5. No sales or distribution of food or drink shall be made from booths or fixed locations rented from the Fair Board under this regulation unless the rental contract specifically allows such sales or distribution.

Section 6. Unless specifically authorized by the Fair Board, no person shall use on the grounds of the Kentucky Fair and Exposition Center during the State Fair any sound amplification equipment or any device with a speaker emitting loud sound.

JOSEPH R. BELL, Executive Vice President
ADOPTED: February 17, 1983
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: March 15, 1983 at 2:40 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Joe Bell, Kentucky State Fair Board, Kentucky Fair and Exposition Center, Louisville, Kentucky 40221.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:292. *Chapter 1, ECIA* [Title I, ESEA] Migrant Plan.

RELATES TO: KRS *156.010,* [156.030,] 156.035, *156.070*
PURSUANT TO: KRS 13.082, *156.035,* [156.030,] 156.070
NECESSITY AND FUNCTION: In accordance with Section 435 of the General Education Provisions Act and Section 564 of the Education Consolidation and Improvement Act of 1981, the Department of Education, when applying to the U.S. Department of Education for participation in programs for migratory children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This regulation, *through adoption of the migrant plan developed by the Department of Education,* implements the State Board of Education's *duties to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of migratory children funds* [plan approval and federal statute implementation functions under KRS 156.030 and 156.035 relative to a migrant plan].

Section 1. The Chapter 1, ECIA Migrant Education Annual Program Plan for fiscal year ending September 30, *1984* [1983], such to become effective July 1, *1983* [1982], is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. Copies of this plan may be obtained from the Division of Compensatory Education, 9th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 2. The *Chapter 1, ECIA* [Title I, ESEA] Migrant Plan for Fiscal Year *1983* [1982 ending September 30, 1982], which is filed herewith and incorporated by reference, shall remain in effect for all funds until July 1, *1983* [1982], and between July 1 and September 30, *1983* [1982], for all funds obligated or encumbered by June 30, *1983* [1982].

Section 3. Local educational agency program applications must be authorized by the local board of education prior to submission to the Kentucky Department of Education.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: March 8, 1983
RECEIVED BY LRC: March 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:003. Annual program plan for the administration of the education of the handicapped act.

RELATES TO: KRS *156.010,* 156.035, 157.200 to *157.290* [157.305]
PURSUANT TO: KRS 13.082, *156.035, 156.070, 157.224*
NECESSITY AND FUNCTION: *KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts, and KRS 156.010, 156.035, and 157.224 set forth the responsibilities of the Department of Education and the State Board of Education relative to the development and approval of a state plan required for receipt of federal funds for special education programs. This regulation adopts the current Annual Program* [The State] Plan for the Administration

of *the* Education of the Handicapped Act, Part B, *which is necessary* [must be amended annually] in order *for the Department of Education* to be eligible to receive federal funds under P.L. 93-380, as amended by P.L. 94-142.

Section 1. Pursuant to the authority vested in the Kentucky State Board *of* [for Elementary and Secondary] Education, the Kentucky Annual Program Plan for the Administration of the Education of the Handicapped Act is hereby approved by the State Board *of* [for Elementary and Secondary] Education in accordance with the approved federal guidelines and submitted to the U. S. *Secretary* [Commissioner] of Education for his approval. This plan is incorporated by reference and hereinafter should be referred to as the "Kentucky Annual Program Plan for the Administration of the Education of the Handicapped Act," revised *1983 and effective for the school years 1983-84, 1984-85, and 1985-86* [1980]. Copies of the plan may be obtained from the Bureau of Education for Exceptional Children, State Department of Education, Frankfort, Kentucky 40601.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: March 8, 1983
RECEIVED BY LRC: March 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 9:040. Variable annuity agents' examination; exception.

RELATES TO: KRS 304.9-170, *304.15-320*
PURSUANT TO: KRS 13.082, 304.2-110, *304.15-320*
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation removes a duplicate burden on qualified annuity agent's licenses.

Section 1. In lieu of Part 1 of the NAIC examination for a Variable Annuity Agent's license, the commissioner may accept a certificate that the applicant has successfully passed a United States Securities and Exchange Commission approved examination. [Such certificates shall state the date of the examination and the grade attained by the applicant.]

DANIEL D. BRISCOE, Commissioner
ADOPTED: March 7, 1983
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: March 11, 1983 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 45:045. Sanitation; retail food markets.

RELATES TO: KRS 217.005 to 217.215, 217.992
PURSUANT TO: KRS 13.082, 194.050, 211.090
NECESSITY AND FUNCTION: The Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992 authorizes the *Cabinet* [Department] for Human Resources to regulate the sanitary production, processing, transportation, storage and sale of food and food products in order to reduce their possibility of becoming adulterated by filth or other harmful substances. The function of this regulation is to establish uniform sanitary requirements for operation of retail food markets in Kentucky.

Section 1. Citation of Regulation. This regulation may be cited as the "State Retail Food Market Sanitation Regulation."

Section 2. Permit Required; *Inspection Fees.* (1) No person shall operate a retail food market within the Commonwealth of Kentucky who does not possess a valid permit issued to him by the *cabinet* [department]. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain such a permit. Provided, however, that retail food markets in operation prior to the effective date of this regulation, *i.e., June 2, 1976,* shall not be required to have a two (2) compartment sink, hand lavatory, or hot and cold running water located within the establishment if only prepackaged food products are sold or if food processing is limited to the cutting and slicing of ready-to-eat food products; and provided further, that such food processing is performed in a safe and sanitary manner in accordance with the operational requirements of this regulation; and provided further, that no public health nuisance exists. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every retail food market. The permit shall continue in force and remain valid unless suspended or revoked for cause.

(2) Any person desiring to operate a retail food market shall make written application for a permit on forms provided by the *cabinet* [department]. Upon receipt of an application, the *cabinet* [department] shall make an inspection of the retail food market to determine compliance with the provisions of this regulation. When inspection reveals that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the *cabinet* [department].

(3) The permit holder shall pay the inspection fee required by 902 KAR 45:110. In the event the permit holder fails to pay the required inspection fee, procedures to suspend the permit to operate shall be initiated in accordance with the provisions of this regulation.

Section 3. Food Supplies. All food for sale in retail food markets shall be wholesome, properly labeled and processed under conditions acceptable to the *cabinet* [department]. Meat and meat products and poultry and poultry products offered for sale shall have been inspected and passed for wholesomeness by an official governmental agency. All hermetically sealed foods offered for sale shall have been processed in approved food processing establishments. Home prepared food shall not be used or offered for sale by a retail food market.

Section 4. Food Protection. All food offered for sale shall be protected from contamination. All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food and foods in a frozen state shall be maintained at safe temperatures, except during necessary periods of preparation. Shell eggs shall be stored and displayed at a temperature not to exceed 60 degrees Fahrenheit. Pre-cooked poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked. Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes may be used in retail food markets. Poisonous and toxic materials shall be identified and shall be used, stored, or displayed only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the *cabinet* [department] shall be handled and bagged separately at check-out counters. Spoiled, damaged, returned or detained food items shall be segregated from other food pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition.

Section 5. Health and Disease Controls. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a retail food market in any capacity in which there is likelihood of such person contaminating food or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the market has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the *cabinet* [department] immediately. All employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in direct handling of food, or food contact surfaces of utensils or equipment.

Section 6. Food Equipment and Utensils. (1) All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable, durable, and shall be in good repair, and the food-contact surfaces of such equipment and utensils shall, in addition, be non-toxic, corrosion-resistant and relatively non-absorbent. Provided that, when approved by the *cabinet* [department], equipment in use at the time of adoption of this regulation which does not meet fully the above requirements may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are non-toxic. All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Single-service articles shall be made from non-toxic materials.

(2) All food contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation of food and all utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food-contact surfaces of equipment used in the preparation, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition. A two-compartment sink, provided with hot and cold running water shall be conveniently located within the establishment. In all new establishments and establishments which are extensively altered, a two-compartment sink shall also be readily accessible to areas where foods are processed or prepared. After cleaning and until use, all food contact surfaces of equipment and utensils shall be stored and handled so as to be protected from contamination. All single-service articles shall be stored, handled and dispensed in a sanitary manner, and shall be used only once.

Section 7. Sanitary Facilities and Controls. (1) The water supply shall be from a public supply if available or in the absence thereof, from a supply that complies with applicable state laws and regulations. Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils, or containers are washed. Ice and bottled or packaged water shall be from an approved source, and shall be processed, stored, transported, and handled in a sanitary manner.

(2) All sewage shall be disposed of in a public sewerage system, or in the absence thereof, in a manner that complies with applicable state laws and regulations.

(3) All plumbing shall comply with the state plumbing code.

(4) Properly operating, clean, conveniently located toilet facilities shall be provided for employees. Adequate supplies such as toilet tissue, soap, cleansers, towels, or hand drying devices, and covered waste receptacles shall be provided. Handwashing facilities shall be provided with hot and cold running water and shall be conveniently located within the establishment. In all new establishments and establishments which are extensively altered, lavatories shall also be located within the areas where foods are processed or prepared. The doors of toilet rooms shall be self-closing.

(5) All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leakproof, easily cleanable containers which shall be covered with tight-fitting lids when not in continuous use. Approved, adequate containers or other storage areas shall be provided for the storage of all other rubbish. All garbage and rubbish shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance.

(6) Effective measures shall be taken to protect against the entrance, harborage, and breeding of rodents, flies, roaches, and other vermin.

Section 8. Construction and Maintenance. (1) All floor surfaces shall be smooth, easily cleanable, and except for non-refrigerated dry storage areas, of non-absorbent material. All floors shall be kept clean and in good repair. Sawdust, wood shavings, or similar materials shall not be used on the floors. Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor. The walls and ceilings of all rooms shall be kept clean and in good repair. All walls of rooms or areas in which food is prepared, or utensils or hands are washed, shall be easily cleanable, smooth and light-colored, and shall have washable surfaces up to the highest level reached by splash or spray.

(2) Ample lighting shall be provided in all areas of a retail food market. Artificial lighting fixtures shall be pro-

vided with protective shielding in food preparation, food display areas, refrigeration units, utensil and equipment washing areas and all other areas where food is exposed. Artificial illumination of foods displayed for sale shall not alter their actual appearance.

(3) All rooms in a retail food market shall be well ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food preparation surfaces. Filters, where used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable state and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(4) Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings.

(5) All parts of the retail food market and its premises shall be kept neat, clean and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food-contact surfaces. None of the operations connected with retail food markets shall be conducted in any room used as living or sleeping quarters. Laundered clothes and clothing items shall be stored in a clean place and protected from contamination until used. Soiled clothes and clothing items shall be kept in suitable containers until removed for laundering. Live animals, including birds, turtles, cats and dogs shall be excluded from all food markets. This exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind persons shall be permitted in food markets.

(6) All exterior areas and premises of markets shall be kept clean, free of debris and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.

Section 9. Enforcement Provisions. (1) *The cabinet shall inspect retail food markets offering only prepackaged foods for sale at least once each twelve (12) months; and shall inspect all other retail food markets* at least once *each* [every] six (6) months*;* [, the department shall inspect each retail food market] and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Whenever the *cabinet* [department] makes an inspection of a retail food market, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish the original of such inspection report form to the person responsible. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(3) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70), but not more than eighty-four (84), all violations of one (1) or (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the *cabinet* [department], but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the *cabinet* [department], by the permit holder, within such ten (10) day period.

(e) The report of inspection shall state that failure to comply with any time limits for corrections shall result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the *cabinet* [department].

(f) Whenever a retail food market is required under the provisions of this regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

(4) Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the person responsible or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the person responsible.

(5) Whenever the *cabinet* [department] has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with such *cabinet's* [department's] personnel concerned in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practicable. In all other instances of violation of the provisions of this regulation, *including the non-payment of inspection fees,* the *cabinet* [department] shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the *cabinet* [department], by the permit holder, within such ten (10) day period.

(6) Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the *cabinet* [department] shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

(7) For serious or repeated violations of any of the requirements of this regulation, or for interference with the *cabinet's* [department's] personnel in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the

cabinet [department]. Prior to such action, the *cabinet* [department] shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the *cabinet* [department], by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(8) The hearings provided for in this regulation shall be conducted by the *cabinet* [department] at a time and place designated by it. Based upon the record of such hearing, the *cabinet* [department] shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time the hearing is requested.

Section 10. Procedure When Infection is Suspected. When the *cabinet* [department] has reasonable cause to suspect the possibility of disease transmission from any retail food market employee, the *cabinet* [department] shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The *cabinet* [department] may require any or all of the following measures:

(1) The immediate exclusion of the employee from all retail food markets;

(2) The immediate closure of the retail food market concerned until, in the opinion of the *cabinet* [department], no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and

(4) Adequate medical and laboratory examinations of the employee and of his associates, with such laboratory examinations as may be indicated.

Section 11. Plan Review of Future Construction. When a retail food market is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a retail food market, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the *cabinet* [department] for approval before such work is begun.

[Section 12. Full compliance with this regulation must be met by January 1, 1977.]

DAVID T. ALLEN, Commissioner
ADOPTED: March 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:004. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the *cabinet* [department], by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations of the Medically Needy: An applicant for or recipient of medical assistance is permitted to retain:

(1) A homestead, occupied or abandoned, household equipment, motor vehicles and farm equipment without limitation on value;

(2) Equity of $6,000 in income-producing, non-homestead *real* property;

(3) Equity of $3,000 in non-income producing, non-homestead *real* property;

(4) Savings, stocks, bonds, *and other similar liquid assets* totaling no more than $1,500 for family size of one (1); $3,000 for family size of two (2); and fifty dollars ($50) for each additional member.

(5) Burial reserves in the form of pre-paid burial, trust fund or life insurance policies are exempt from consideration if the reserve does not exceed $1,500 per individual. If burial reserves have a face value in excess of the above amount, the cash surrender value is determined and any excess of the allowable reserve added to total liquid assets in determining eligibility.

Section 2. Income and Resource Exemptions: Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the *cabinet* [department], except that the AFDC earned income disregard (first thirty dollars ($30) and one-third (⅓) of the remainder) may not be allowed in determining eligibility for medical assistance only. For individuals in long term care, amounts in excess of the resource maximums which are accumulated from the twenty-five dollar ($25) personal needs allowance or the month of entry disregard, and which are maintained in separately identifiable accounts, shall be exempted from consideration.

Section 3. Income Limitations of the Medically Needy: Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	2,200	183
2	2,600	217
3	3,100	258
4	3,800	317
5	4,400	367
6	5,000	417

For each additional member, $600 annually or fifty dollars ($50) monthly is added to the scale.

Section 4. Additional Income Considerations: In comparing income with the scale as contained in Section 3, gross income is adjusted as follows in all cases with exceptions as contained in Section 5:

(1) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with full-time employment (defined as employment of thirty (30) hours per week or 130 hours per month or more) the standard work expense deduction is seventy-five dollars ($75) per month. For those with part-time employment (defined as employment of twenty-nine (29) hours per week or 129 hours per month or less) the standard work expense deduction is forty dollars ($40) per month. All earnings of an in-school child are disregarded.

(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1)) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1)). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

Section 5. Individuals in Chronic Care Institutions: For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections 2 and 3.

(2) Income protected for basic maintenance is twenty-five dollars ($25) monthly in lieu of the figure shown in Section 3. All income in excess of twenty-five dollars ($25) is applied to the cost of care except as follows:

(a) Available income in excess of twenty-five dollars ($25) is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 [, including any additional amount needed to cover the verified medical expenses of the spouse or minor children].

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs. However, an individual entering a facility on the first day of the month, and who remains institutionalized for the remainder of the month, would not receive a disregard for home maintenance.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-Down Provisions: No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 may qualify for any part of a three (3) month period in which medical expenses incurred [during the period] have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment [and is thus disregarded as a medical expense. When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the medical assistance program) if actually available for payment to the provider].

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the medical assistance program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.

Section 10. Relative Responsibility. For purposes of the medical assistance program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Stepparents are responsible for their stepchildren as shown in *Section 10(7) and* Section 11. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted

income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart, both of whom are concurrently applying for or receiving MA only, income is considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart. After the six (6) month period, each is considered as a single individual.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, the applicant or recipient is considered as a single individual in the month after separation and only that individual's income and resources are considered.

(5) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4), who has jointly held resources with his spouse, one-half (½) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or non-spouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18) [, or age eighteen (18) through twenty (20) if in school,] living with his parent(s) *(including stepparent, if applicable)*, total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent *using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.*

(8) Income and resources of parent(s) are not considered available to a child living apart from the parent(s) for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five dollars ($25) maintenance standard is not applicable since his needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

(10) When a mentally retarded individual under age eighteen (18) meets participation criteria and elects to participate in the program of alternative intermediate services for the mentally retarded, the income and resources of the parent(s) and/or spouse are not considered available to that individual.

Section 11. Treatment of Income of the Stepparent and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income is considered in the same manner as for a parent if the stepparent is included in the family case. When the stepparent living in the home is not being included in the family case on the basis of incapacity, the stepparent's gross income is considered available to the assistance group subject to the following exclusions/disregards:

(1) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time (with full-time and part-time employment as defined in Section 4(1)).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability.

(3) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(4) Payments by the stepparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent receiving Supplemental Security Income.

(6) Verified medical expenses for the stepparent and his/her dependents in the home.

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection 3).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-Sum Income. Lump-sum income is prorated over a three (3) month period.

Section 14. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the *cabinet* [department] shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the *cabinet* [department] will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsiblity to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the *cabinet* [department] by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment.

Section 2. The Medically Needy. Other individuals, meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the *Cabinet* [Department] for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, ex-

cept that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii).

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Parents may be included for assistance in the cases of families with children including *natural and* adoptive parents [and alleged fathers where circumstances indicate the alleged father has admitted the relationship prior to application for assistance]. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(10) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(12) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(13) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(14) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(15) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be

eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220(1)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer money payment programs under Title IV-A of the Social Security Act and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. This regulation sets forth the time and the manner in which payments are made and the persons to whom payments may be made as required by KRS 205.220(1).

Section 1. Manner and Time of Payment: (1) All assistance payments are made by check issued monthly.

(2) The effective date of initial payment for *Aid to Families with Dependent Children (AFDC)* [new] approvals shall be the date an application is filed if all eligibility factors were met as of that date. *The effective date for State Supplementation Payments (SSP) approvals shall be the first day of the month in which an application is filed if all eligibility factors were met as of that month (i.e., on or after the date of application).*

(3) Payment *for both AFDC and SSP* is made for an entire month during any part of which eligibility factors are met, except for *the* initial month's benefits for *AFDC* [new] approvals which shall not be made for any period prior to the date of application.

(4) For AFDC, payments shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten dollars ($10). Any individual who is denied a payment for this reason shall be deemed a receipient of AFDC for all other purposes.

(5) Supplemental payments shall be made if, due to administrative deadlines, changes in circumstances cannot be recognized in the month such change is reported; or, for AFDC, cannot be recognized in the time frames required in retrospective budgeting.

(6) Supplemental payments to correct underpayments due to administrative errors shall be made for a period of up to twelve (12) months preceding the month of error correction if the error existed in the preceding months.

Section 2. Inalienability of Payment: Money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances; however, the cabinet may initiate recoupment to recover overpayment of AFDC benefits.

Section 3. Eligible Payees: Money payments are issued in the name of the eligible applicant, except that:

(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:

(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or

(b) The parent payee has refused without good cause to pariticipate in the Work Incentive Program or the Child Support Program.

(2) In the State Supplementation Payments Program, the payee may in appropriate circumstances be:

(a) The legally appointed committee or guardian; or

(b) For individuals receiving other statutory benefits (such as SSI), the same as the representative payee for that benefit program.

(3) [(2)] Payment for the month of death may be made to the parent or other specified relative of the deceased child, or the duly appointed administrator of the estate or other qualified executor of the will of the deceased.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

REVENUE CABINET
Department of Professional and Support Services

103 KAR 16:170. Repeal of 103 KAR 16:160.

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: The Kentucky Supreme Court held in Ruby Construction Company v. Department of Revenue, Ky. App., 578 S.W. 2d 248 (1978), that 103 KAR 16:160 was not supported by adequate statutory authority.

Section 1. 103 KAR 16:160, Apportionment and allocation; construction companies, is hereby repealed.

RONALD G. GEARY, Secretary
ADOPTED: March 15, 1983
RECEIVED BY LRC: March 15, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alex W. Rose, Commissioner, Department of Professional and Support Services, Capitol Annex Building, Frankfort, Kentucky 40620.

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:150. Deer hunting seasons.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.176, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.400, 150.415, 150.416
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery seasons in specified counties and on wildlife management areas (WMA). This regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting, to prescribe the methods by which deer may be legally taken, and to prescribe procedures by which handicapped persons may apply for exemptions from conventional hunting methods requirements. The function of this regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer to furnish sport and recreation for present and future residents of the state.

Section 1. Deer Gun Seasons, Zones, Dates, and Legal Deer. Deer gun hunting is permitted in the following zones on the dates listed, except as specified in subsection (6) of this section and Section 3.

(1) Zone No. 1: Open to either sex deer hunting for ten (10) consecutive days beginning the first Saturday in November. Zone 1 is described as follows: The area between Mammoth Cave National Park boundary and the following roads: In Hart County from the Edmonson County line, east on State Route (SR) 728 to SR 88, east on Forestville Road, south to Logsdon Valley Cemetery Road, south to the Green River, east on Williams Road, east on SR 218, then south on I-65; in Barren County, I-65 south to the Edmonson County line; in Edmonson County, 31-W from the Barren County line west to SR 259, northwest to 728, then east to the Hart County line.

(2) Zone No. 2: Open to antlered deer gun hunting for ten (10) consecutive days beginning the first Saturday in November. On the last day of the hunt, either sex deer may be taken. Counties in this zone are: Bullitt, Butler, Carroll, Christian, Crittenden, Gallatin, Hancock, Hopkins, Livingston, Logan, Muhlenberg, Ohio, Oldham, Todd and Trimble.

(3) Zone No. 3: Open to antlered deer gun hunting for ten (10) consecutive days beginning the first Saturday in November. Counties in this zone are: Anderson, Ballard, Boone, Boyle, Bracken, Breckinridge, Caldwell, Calloway, Campbell, Carlisle, Casey, Edmonson, (except that portion included in Zone 1), Franklin, Fulton, Grant, Graves, Harrison, Henderson, Henry, Hickman, Larue, Marion, Mason, McCracken, McLean, Meade, Mercer, Nelson, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Union, Washington and Webster.

(4) Zone No. 4: Open to antlered deer gun hunting for five (5) consecutive days beginning the first Saturday in November. Counties in this zone are: Adair, Allen, Barren (except that portion included in Zone 1), Bath, Boyd, Carter, Cumberland, Daviess, Elliott, Fleming, Grayson, Green, Greenup, Hardin, Hart (except that portion included in Zone 1), Jefferson, Kenton, Lawrence, Lewis, Lyon, McCreary, Marshall, Menifee, Metcalfe, Monroe, Morgan, Nicholas, Rowan, Russell, Taylor, Warren, Wayne, and Woodford.

(5) Zone No. 5: Open to antlered deer gun hunting for three (3) consecutive days beginning the first Saturday in November. Counties in this zone are: Bell, Bourbon, Breathitt, Clark, Clay, Clinton, Estill, Fayette, Floyd, Garrard, Harlan, Jackson, Jessamine, Johnson, Laurel, Lee, Leslie, Letcher, Madison, Magoffin, Martin, Montgomery, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Simpson, Whitley and Wolfe.

(6) Zone No. 6: Counties, wildlife management areas, and parks closed to all deer hunting:

(a) Counties in this zone are Lincoln, Knott and Knox.

(b) Wildlife management areas: Ballard WMA in Ballard County (except that portion south of Terrel Landing Road), Central Kentucky WMA in Madison County, Clay WMA in Nicholas County, Grayson Lake WMA in Carter and Elliott Counties, and Robinson Forest WMA in Breathitt, Perry, and Knott Counties.

(c) Deer hunting is prohibited within the boundaries of all national parks.

Section 2. Deer Archery Season, Zones, Dates, and Legal Deer. Zones 1, 2, and 3 are open to either sex archery deer hunting during specified periods as follows, except as specified in Section 3. Zones 4 and 5 are open to antlered deer only archery hunting except as specified in Section 3.

(1) Archery season (longbows and compound bows): October 1 through November 3 and November 16 through December 31.

(2) Crossbow season: November 19 through 28 only.

Section 3. Exceptions to Deer Hunting Regulations on Wildlife Management Areas. All deer gun and archery regulations apply unless otherwise specified herein. Deer hunting will be permitted only on the dates listed in this section. Except as otherwise specified below, all gun hunters must check in and out at the area check station and archery hunters need not check in but must check out if a deer is taken. Gun hunters on all the areas listed below (except the Pioneer Weapons WMA) must be selected by a drawing. Applications must be made only on forms provided by the Department of Fish and Wildlife Resources. No more than four (4) hunters may apply per form. More than one (1) application per individual per hunter will disqualify that applicant. Completed applications must be accompanied by a stamped, self-addressed envelope and be postmarked no later than August 31. Hunters may hunt on assigned dates only.

(1) Beaver Creek WMA in McCreary and Pulaski Counties:

(a) Archery season: antlered deer only, October 15 through 30.

(b) Gun season: antlered deer only, December 3 and 4.

(2) Cane Creek WMA in Laurel County:

(a) Archery season: antlered deer only, October 15 through 30.

(b) Gun season: antlered deer only, November 26 and 27.

(3) Dewey Lake WMA in Floyd County:

(a) Archery season: antlered deer only, October 15 through 30.

(b) Gun season: antlered deer only, December 10 and 11.

(4) Higginson-Henry WMA in Union County:

(a) Archery season: either sex deer, October 1 through November 3 and December 5 through 31.

(b) Gun season: either sex deer, December 3 and 4.

(5) Kleber WMA in Owen and Franklin Counties:

(a) Archery season: either sex deer, October 1 through November 3 and December 5 through 31.

(b) Gun season: either sex deer, December 3 and 4.

(6) Mill Creek WMA in Jackson County:

(a) Archery season: antlered deer only, October 15 through 30.

(b) Gun season: antlered deer only, December 3 and 4.

(7) Pioneer Weapons WMA in Bath and Menifee Counties:

(a) Zone No. 4 archery and gun seasons apply.

(b) Muzzle-loading firearms only; muzzle-loading handguns of .44 caliber or larger are permitted; crossbows may be used during the entire archery season.

(c) Checking in or out is not required. All deer taken must be checked in accordance with Section 5(3) of this regulation.

(8) Redbird WMA in Clay and Leslie Counties:

(a) Archery season: antlered deer only, October 15 through 30.

(b) Gun season: antlered deer only, November 26 and 27.

(c) Muzzle-loading firearms only season: antlered deer only, December 3 and 4. Muzzle-loading handguns of .44 caliber or larger are permitted.

(9) West Kentucky WMA in McCracken County:

(a) Archery season: either sex deer, October 1 through November 3 on tracts 1 through 6. December 12 through 31 on tracts 4, 5, and 6 only.

(b) Gun season: either sex deer, December 10.

(c) Youth gun season: either sex deer, December 3. Open only to persons at least ten (10) years of age but who have not reached their sixteenth birthday. Each youth must have a valid Kentucky hunting license, a Kentucky deer permit, a state approved hunter safety certificate, and must be accompanied by an adult.

(d) All gun hunters are limited to muzzle or breech-loading shotguns only.

(e) No firearms permitted on any "A" tract or tract 7 at anytime.

(f) All hunters must check in and out daily.

(10) Yellowbank WMA in Breckinridge County.

(a) Archery season: either sex deer, October 1 through November 3 and December 5 through 31.

(b) Gun season: either sex deer, December 3 and 4.

Section 4. Legal Deer, Hunting Hours and Bag Limits. (1) An antlered deer is defined as having one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(2) Hunting is permitted during daylight hours only.

(3) The limit is two (2) deer per hunter per year. Only one (1) deer may be taken by firearms outside the following designated special deer areas: Beaver Creek, Blue Grass Depot Activity, Cane Creek, Dewey Lake, Ft. Campbell, Fort Knox, Land Between the Lakes, Mill Creek, Redbird, West Kentucky, Yellowbank, Kleber and Higginson Henry WMAs. Under no circumstances shall any individual be permitted to take more than two (2) deer anywhere in the state.

Section 5. Hunting License, Deer Permits, Deer Tags and Check Station Requirements. (1) Hunting license and deer permit: All persons taking or attempting to take deer must have in possession a valid annual Kentucky hunting license and a valid deer hunting permit unless exempted by KRS 150.170(3), (5) or (6).

(2) Leaving head attached: any person possessing a deer must leave the head attached to the body until the carcass is removed from the field and processed.

(3) Mandatory deer check stations: Any person taking a deer during any deer hunting season must have it checked at the deer check station nearest to where the deer was taken, or by the nearest available conservation officer, no later than 9 a.m. on the day following the day taken. The hunter must fill out the stub attached to the deer permit and submit it to the check station operator or conservation officer.

(4) Tagging deer carcass and head:

(a) Before moving the carcass, the hunter must attach the metal tag portion of the deer permit to the deer. This tag must be permanently locked and attached so that it cannot be removed without destroying the tag or mutilating the carcass and must remain attached until the carcass is processed and packaged. The hunter must detach the stub marked "A Tag" and, before moving the carcass, punch a clearly visible hole through the space provided to indicate the weapon used to take the deer.

(b) Deer heads or other parts separated from the carcass for mounting by a taxidermist must have the taxidermist tag properly filled out and attached to the separated part.

(c) Deer hides may be sold to licensed fur buyers and licensed processors only.

(5) Second deer permit: a hunter who has taken one (1) deer may purchase a second deer permit, which shall be valid only when accompanied by a properly punched, stamped or signed "A Tag" portion of the first deer permit. If this portion of the first deer permit is punched to indicate that the first deer was taken by gun, the second deer

permit is valid only for archery hunting, except that two (2) deer may be taken by gun if one (1) is taken on a designated special deer area listed in Section 4(3).

Section 6. Prohibited Methods and Conditions For Gun and Archery Deer Hunting. (1) Residents of any state which does not grant Kentucky residents the right to hunt deer may not hunt deer in Kentucky.

(2) Persons under eighteen (18) years of age may not hunt deer with a gun unless accompanied by an adult.

(3) Deer may not be taken with the aid of dogs or any domestic animal, or by the use of a boat or any type of vehicle.

(4) A deer may not be taken while the deer is swimming.

(5) All gun deer hunters must wear a visible vest, coat, coveralls, cap or hat of hunter orange color. The entire garment must be hunter orange.

(6) On department-owned and operated wildlife management areas, the Daniel Boone National Forest, and the Big South Fork National River and Recreation Area, the use of any nails, spikes, screw-in devices, wire or tree climbers is prohibited for attaching tree stands or for climbing trees. Only portable tree stands and climbing devices that do not injure trees may be used. Portable stands may be placed in trees no more than two (2) weeks before opening day of each hunting period and must be removed within one (1) week following the last day of each hunting period. All portable tree stands must be marked with the owner's name and address. Existing permanent tree stands may not be used.

(7) Rattling of antlers or sticks and the use of hand or mouth operated calls are permitted.

(8) No person or persons shall cast the rays of a spotlight, jacklight or other artificial lighting device on any highway or in any field, woodland or forest, while having in his or her possession, or under his or her control, a firearm or other implement by which a deer could be killed, even though such deer is not shot at, injured or killed. This shall not apply when the headlights of a motor vehicle in normal operation on a highway are cast upon a field, woodland or forest in the normal course of travel, nor shall it apply to landowners or tenants engaged in normal or necessary activity upon their lands.

(9) No person shall possess a deer taken contrary to this or any other regulation or statute.

Section 7. Firearms Restrictions for Gun Deer Hunting. (1) Permitted firearms: Center-fire rifles of .240 caliber or larger (with the exceptions of the .30 caliber carbine and .256 caliber rifle); muzzle-loading rifles of .38 caliber or larger; and muzzle-loading and breech-loading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile. Handguns with barrel lengths of 3.90 inches or greater are permitted. Only the following cartridges may be used: .30 caliber Herret; .357 magnum; .357 Herret; .357 automag; .41 magnum; .41 automag; .44 magnum; .44 automag; .45 automag; and any other cartridge using a bullet of at least 110 grains weight and developing at least 500 foot-pounds of muzzle energy.

(2) Prohibited firearms: any caliber of cartridge that does not meet the requirements given in subsection (1) of this section; any fully automatic weapon or weapon capable of firing more than one (1) round with one (1) trigger pull; any military issue M-1 .30 caliber carbine or its equivalent caliber sold commercially; and .256 caliber rifle.

(3) Fully jacketed military type ammunition and tracer bullet ammunition are prohibited. Buckshot or any type of shot shells are prohibited.

Section 8. Equipment Restrictions for Archery Deer Hunting. (1) Longbows and compound bows may not be fitted with any device capable of holding an arrow at full draw without aid from the hunter.

(2) Arrows must be barbless without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide.

(3) Crossbows must have a minimum pull weight of 100 pounds and a working safety device. Minimum bolt weight is 380 grains with a barbless broadhead point at least seven-eighths (7/8) inch wide, with no chemical treatments or chemical attachments.

(4) Archery hunters are prohibited from carrying firearms while hunting deer.

Section 9. Hunting Methods Exemptions for Handicapped Hunters. Persons with physical handicaps that would make it impossible for them to hunt by conventional methods may apply by letter to the Commissioner of the department for a hunting methods exemption. The Commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he or she could not otherwise do so because of his or her handicap. Specific exemptions to be allowed will be described in the letter of authorization, which will be signed by the Commissioner and a conservation officer who will certify that the applicant for the exemption is, in his opinion, handicapped to such a degree that the requested exemption is necessary to permit the applicant to hunt. Hunting method exemptions will expire at the end of the calendar year.

Section 10. 301 KAR 2:115, Gun and archery seasons for deer, is hereby repealed.

CARL E. KAYS, Commissioner
ADOPTED: February 27, 1983
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: March 14, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Agriculture
Division of Livestock Sanitation

302 KAR 20:140. Breeding shed for female equine.

RELATES TO: KRS 257.070
PURSUANT TO: KRS 13.082, 257.030
NECESSITY AND FUNCTION: To establish the necessary requirements to allow female equine over 731 days of age to enter a breeding shed in Kentucky.

Section 1. Definitions. (1) "Breeding" means natural or artificial insemination of a mare.

(2) "CF test" means a complement-fixation test of equine serum for the detection of specific antibodies of CEM bacterium.

(3) "Set of cultures" means a culture from the clitoral sinus (if intact), clitoral fossa, cervix and/or endometrium of the uterus.

Section 2. Maiden mares over 731 days of age at the time of importation coming from any country outside the

continental United States, its territories and possessions with the exception of Canada will have one (1) negative prebreeding CF test and two (2) sets of negative cultures. One (1) set of cultures must be obtained in early estrus; the second may be taken during a period of seven (7) to fourteen (14) days before or after the culture in estrus. The imported maiden and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 3. Mares over 731 days of age imported from countries not known to be infected with CEM will have one (1) negative prebreeding CF test and two (2) negative sets of cultures. One (1) set of cultures must be obtained in early estrus; the second may be taken during a period of seven (7) to fourteen (14) days before or after the culture is estrus. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 4. Mares over 731 days of age imported from countries known to be infected with CEM will be prophylactically scrubbed before breeding, bred last in line and the stallion scrubbed and treated after breeding. The imported mare and the next three (3) mares bred to the same stallion will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.

Section 5. Domestic and Canadian mares not CF tested during the previous breeding season will have the results of one (1) set of cultures before entering the breeding shed.

Section 6. Maiden domestic and maiden Canadian mares are exempt from CF test and culture requirements.

ALBEN W. BARKLEY, II, Chairman
ADOPTED: February 24, 1983
RECEIVED BY LRC: February 24, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: State Board of Agriculture, Alben W. Barkley, II, Chairman, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:070. Onsite sewage disposal manuals.

RELATES TO: KRS 211.375
PURSUANT TO: KRS 13.082, 194.050, 211.350
NECESSITY AND FUNCTION: KRS 211.375(5) authorizes the Cabinet for Human Resources to establish a fee or schedule of fees to cover the costs of publication and dissemination of onsite sewage disposal manuals. The function of this regulation is to set forth the fee to be charged in order to cover the cost to the cabinet of the publication and dissemination of onsite sewage disposal manuals.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

(2) "Onsite sewage disposal manuals" mean technical and non-technical manuals developed by the cabinet to provide pertinent information, requirements of applicable laws and regulations, and standards for the proper siting, design, installation and operation of onsite sewage disposal systems.

(3) "Onsite sewage disposal system" means an installation intended for the treatment and disposal of sewage by means of a septic tank, or other approved device, and includes the drainfield into which the effluent will be dispersed.

Section 2. Schedule of Fees. The fee per copy of onsite sewage disposal systems manuals shall be two dollars ($2).

Section 3. Availability of Manuals. Manuals shall be available through the cabinet, and district and county health departments to all interested parties, upon payment of the required fee.

DAVID T. ALLEN, Commissioner
ADOPTED: March 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:160. Home and community based services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions applicable to home and community based services provided to eligible recipients as an alternative to skilled nursing and intermediate care facility services.

Section 1. General Coverage Provisions. The home and community based (HCB) services described in this regulation may be provided only to those individuals eligible for medical assistance who meet patient status criteria for skilled nursing facility care (as set forth in 904 KAR 1:022) or intermediate care facility care (as set forth in 904 KAR 1:024). The HCB services described herein are designed to prevent or reduce institutionalization at the skilled nursing and intermediate care levels, and may therefore be provided only to individuals in community residence living situations. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services, and are available only to recipients who reside in the Bluegrass Area Development District as specified in the waiver request. Excluded from coverage are those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services, and inpatients of hospitals, skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the mentally retarded. HCB services may be provided

only to those individuals for whom the HCB services are an appropriate alternative to institutionalization, who meet appropriate patient status, and who choose the HCB services option. The home and community based services agency (provider) shall be responsible for securing appropriate physician recommendations and orders relating to care, and for performing the required comprehensive assessment and care planning. The Kentucky Peer Review Organization shall make the level of care determination as the agent or representative of the cabinet. HCB services must be prior authorized by the cabinet. Notwithstanding the preceding, the assessment may be completed and billed for any appropriate medicaid recipient.

Section 2. Provider Participation. Participating HCB providers must meet all applicable certification and licensure requirements for providing in-home and community based services under the Kentucky Medical Assistance Program, and shall be required to comply with the provider participation agreement providing for services in accordance with the terms and conditions specified in this regulation.

Section 3. Covered Services. The following services are covered HCB services:

(1) Assessment. The assessment includes the collection of data necessary to determine the appropriateness of HCB service for the client, and case planning (a patient care plan to include services required, duration and frequency, and estimated cost).

(2) Case management. This is the process of locating, coordinating and monitoring a group of services with responsibility resting with a designated person. Usual case management is reimbursable as an administrative cost. Extraordinary case management may be provided to individuals with multi-faceted medical, social and financial needs as a separately identified item of covered service.

(3) Homemaker services. This is the provision of service relating to general household activities, such as meal preparation and routine household care, and may be provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care and arrangements cannot be made with relatives or friends for the performance of the service. Homemaker services may additionally be provided on an intermittent basis when necessary to supplement those services usually and customarily provided by the informal caregiver.

(4) Personal care services. These are services which enable a person to be treated by his/her physician on an outpatient basis, are ordered by the physician, are provided by a qualified person (not a member of the recipient's family), and which are supervised by a registered nurse. Personal care services are medically oriented and related to the patient's physical requirements, and may include bathing, assistance with clothing, assisting with medications customarily self-administered, assistance with ambulation, etc.

(5) Respite care services. This is the provision of homemaker/home health aid level services on a temporary basis due to the absence or need for relief of the informal caregiver. Care must be in accordance with the orders of a physician and the plan of care, and may be provided only when an appropriate alternative informal caregiver is not available to provide the necessary services. Respite care services are not covered after the cost of respite care provided an individual in a service year (beginning with the date of the first covered HCB service) equals ten (10) times the current maximum daily intermediate care facility payment rate.

(6) Minor home adaptations. This is the addition to or modification of the home environment when the patient's condition necessitates a modification of the existing home situation, and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies. Prior approval is required. Major home repairs are not covered.

(7) Adult day health care services. This is the provision of adult day health care in an appropriate licensed facility. Basic services include: one (1) meal per day (including special diets); snacks, as appropriate; registered nurse and other supervision; regularly scheduled daily activities; routine services required to meet daily personal and health care needs; incidental supplies necessary to provide adult day health care services; and equipment essential to the provision of adult day health care services. Ancillary services include: physical, speech and occupational therapy evaluations as indicated for the purpose of developing a plan of treatment which may be carried out by center staff; and necessary ongoing supervision and followup of the maintenance program by the therapist. Transportation is not covered under the service element, but is a separately reimbursable service pursuant to 904 KAR 1:060.

(8) Nutrition services. These are services to assist the physician in evaluating the recipient and establishing a therapeutic nutrition program in accordance with the physician's orders. The family and patient may be appropriately educated and trained so as to ensure understanding, acceptance and implementation of diet recommendations, nutritional evaluations, the use of alternative foods, etc. The service must be provided by a home health agency in conjunction with one (1) or more of the following home health agency services: nursing, physical therapy, speech therapy, occupational therapy, or home health aid services.

(9) Respiratory therapy services. The service may be provided to assist the physician to evaluate the recipient for the techniques for support of oxygenation and ventilation in the acutely ill patient; teaching family the care and maintenance of artifical airways; teaching family techniques to aid removal of secretions from the pulmonary tree; bronchial hygiene therapy; instructing family in the use of respiratory systems, equipment and machines; for the use of pulmonary rehabilitation techniques; and for periodic assessment and monitoring of acute and chronically ill patients for necessity and effectiveness of respiratory therapy services. The service must be provided in accordance with the physician's home health plan of treatment and/or recertification, and must be in conjunction with one (1) of the following home health agency services: nursing, physical therapy, speech therapy, occupational therapy, or home health aid services.

(10) Institutional visit provided prior to discharge. This service may be provided by professional staff of the home health agency to assist in developing the in-home service package and to assure necessary coordination, instruction, and training with regard to the care provided in the institution and that necessary in the home setting. The visit must be ordered by the physician as part of the home health plan of treatment. The service may be provided and billed regardless of whether the client subsequently receives other HCB services, and notwithstanding the coverage provisions specified in Section 1 of this regulation, so long as the patient is an appropriate medicaid recipient.

(11) Provision and retrieval of durable medical equip-

ment. Home health agencies provide appropriate durable medical equipment for the recipient's use; for recipients of HCB services such equipment must be returned to the home health agency when no longer needed by the recipient. Prior authorization by the cabinet is required for the purchase and/or rental of durable medical equipment under the home health agency program.

Section 4. Prior Authorization for Services; Hearing Rights. The cabinet shall prior authorize HCB services to ensure that patient status is met, that HCB services are adequate for the needs of the client, and that HCB services would not reasonably be expected to exceed the cost of institutional care (on an overall basis). A client found unsuitable for failure to meet the specified criteria may be denied HCB services. An individual, if eligible for HCB services, will be given the option of HCB services or traditional skilled nursing or intermediate care facility services. Any denial of service may be appealed pursuant to 904 KAR 2:055.

Section 5. Contracting and Subcontracting. All HCB services, whether provided directly by the participating provider or through contract or subcontract, must be in accordance with the terms and conditions specified herein, and the contractor or subcontractor must meet applicable requirements of law and regulations governing the performance of the service.

Section 6. Auditing and Reporting. All participating providers, contractors and subcontractors shall be required to maintain fiscal and service records and to provide such reports as may be determined necessary by the cabinet for the effective functioning and administration of the program. Such providers, contractors and subcontractors shall be required to make available upon request all service and financial records (including records of ownership, home office costs, etc.) to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and/or their representatives or designees, for auditing and/or monitoring purposes.

Section 7. Implementation. Participating providers may provide services pursuant to the terms and conditions of Sections 1 through 6 of this regulation beginning on the first day of the next calendar month following the month in which this regulation becomes effective.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:170. Payments for home and community based services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the methods of payment for home and community based services provided as an alternative to skilled nursing facility and intermediate care facility care.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers (including coordinating agencies) of home and community based (HCB) services for services rendered to eligible medical assistance recipients who meet patient status criteria for skilled nursing or intermediate care facility care, and who are prior authorized for the HCB service; and shall, in addition, reimburse participating providers (and coordinating agencies) for appropriate assessments and/or institutional visits made for the purpose of determining necessity for, and arranging, HCB services regardless of the final determination of patient status or issuance of prior authorization for HCB services. Coverage provisions are contained in 904 KAR 1:160.

Section 2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained herein.

(1) Assessment, case management (extraordinary), homemaker services, personal care services, institutional visit, respiratory therapy, and nutritional therapy shall be paid on an interim payment rate basis at a percent of billed charges with a year-end settlement to the lower of actual reasonable costs or charges utilizing Medicare principles of reimbursement. The interim rate is derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. When prior year costs and charges are not available, the interim rate will be set at the cabinet's best estimate of current costs (not to exceed charges) based on payments made for similar services.

(2) Respite care shall be paid on the basis of billed charges, with reimbursement for an individual for a service year (beginning with the first billed HCB service) not to exceed a total of ten (10) times the current maximum daily rate for intermediate care facility services (as shown in 904 KAR 1:036). The billed charge should include only the actual cost of the respite care services plus actual overhead costs incurred by the provider. There will be no year-end settlement.

(3) Minor home adaptations shall be paid on the basis of actual billed charges, with reimbursement for an individual for a service year (beginning with the first billed HCB service) limited to a maximum of $110 for all modifications. The service must have been appropriately prior authorized and have been provided. The billed charge should include only the actual cost of the minor home adaptations plus ac-

tual overhead costs incurred by the provider. There will be no year-end settlement.

(4) Durable medical equipment shall be provided by or through home health agencies only with reimbursement made directly to the home health agency in accordance with usual payment provisions. Costs related to retrieval of equipment shall be considered administrative costs, not directly billable, and shall be paid as a year-end settlement at the lower of actual reasonable costs or charges.

(5) Payments for adult day health care services shall be made directly to licensed participation adult day health care centers on the basis of an inteirm rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges. The basic rate shall not exceed eighty (80) percent of the maximum intermediate care reimbursement rate for routine services. Reimbursement for ancillary services shall not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program element.

Section 3. Implementation. Payments may be made for covered services provided beginning on the first day of the next calendar month following the month in which this regulation becomes effective.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:180. Alternative birth center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions for services provided by alternative birth centers for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. General Provisions. Services shall be covered only when provided to an eligible Title XIX recipient by a participating alternative birth center which is appropriately licensed and operating in accordance with 902 KAR 20:150.

Section 2. Covered Services. The following services may be provided by alternative birth centers:

(1) Prenatal visits, to include one (1) initial visit and followup visits as appropriate.

(2) Standby services, with the medical professional (obstetrician or nurse midwife) physically present throughout the course of the labor.

(3) Delivery, which includes the actual delivery, necessary supplies and material, and the post-delivery examination.

(4) Postnatal visits, not to exceed two (2) and which must be accomplished within six (6) weeks of the delivery.

Section 3. Records, Reporting and Monitoring. The facility shall maintain complete records of services rendered, and shall provide such records and reports as the cabinet may require for the effective implementation and administration of the service. Facility records shall be available to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and/or their representatives or designees for auditing or monitoring purposes.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:190. Payments for alternative birth center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for alternative birth center services.

Section 1. General Requirements. The cabinet shall reimburse participating licensed alternative birth centers for covered services rendered eligible Title XIX recipients when such services are provided in accordance with the provisions of 902 KAR 20:150, Alternative birth centers.

Section 2. Payments. (1) Prenatal visits, standby services and postnatal visits may be paid for an employee of the alternative birthing center only when such service is billed through the center. The rate paid shall be the same rate that would be paid for an individual practitioner performing the same service. Payment provisions for nurse-midwives are contained in 904 KAR 1:095, Payments for nurse-midwife services.

(2) The delivery fee payable to the center shall be the facility's usual and customary rate not to exceed $365 per delivery. This fee is inclusive of all costs associated with the

delivery, including the professional fee for the delivery, necessary supplies and materials, and the post delivery examination.

(3) Program payment is to be considered payment in full for all services, supplies, and devices provided during the visit billed, and no additional amounts may be requested from the recipient, the medicaid program, or any other source. This shall not, however, preclude the collection of appropriate amounts from liable third party sources which shall serve to reduce the liability of the cabinet.

JOHN CUBINE, Commissioner
ADOPTED: March 15, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: March 15, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Reprint

COMPILER'S NOTE: Due to an omission of brackets in the original printing of Section 4(4) of this emergency regulation in the January Register, it is hereby reprinted. This emergency regulation became effective on December 15, 1982.

DEPARTMENT OF PERSONNEL

101 KAR 1:055E. Compensation plan, pay for performance.

RELATES TO: KRS 18A.030, 18A.075, 18A.110, 18A.165
PURSUANT TO: KRS 13.082, 18A.075, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to prepare and submit to the board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting an annual wage and salary survey of relevant labor markets, the Commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity, external market competitiveness, and individual employee merit. The plan shall provide salary grades or specific salary rates as appropriate for the various classes. Each job class shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for classes shall be consistent with the functions outlined in the classification plan. The compensation plan shall reward individual employee work performance in accordance with a performance increase chart to be developed by the Commissioner.

(2) When the Commissioner determines through relevant salary surveys that the state's overall compensation position is inadequate in relation to that of other employers, he may authorize, upon certification of the State Budget Director and the Office for Policy and Management as to the availability of funds, a general adjustment of all salary grades in the pay structure to a position which is comparable to the external market. Additional surveys may be conducted as necessary to determine market conditions for specific classes.

(3) The Commissioner shall submit the plan to the board for its approval. The board shall present the plan, through the Secretary of the Finance and Administration Cabinet, to the Governor for his final approval. The Commissioner shall review the plan annually.

Section 2. Appointments. Initial appointments to state service shall be made at the minimum rate of the pay range established for the class unless the Commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the middle rate of the range. Such exception shall be based on the outstanding and unusual nature of the applicant's education, experience or ability over and above the minimum requirements set for the class. Such additional qualifications must be in the same or related area to that of the job duties of the class to which the appointment is to be made. Employees possessing similar qualifications employed in the same class, by the same agency, in the same locality shall have their salaries adjusted to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. Appointing authorities, with the approval of the Commissioner, may place re-employed, reinstated, and probationarily appointed former employees at a salary determined by one (1) of the following methods:

(1) Reinstatement to a class having the same or lower pay grade that is currently assigned to the employee's former class:

(a) Request the same salary that was paid at the time of

separation if such salary is within the current salary grade;

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such a salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(2) Re-employment or probationary appointment of former employees to the same, lower, or higher pay grade:

(a) Request the same salary that was paid at the time of separation if such salary is within the current salary grade;

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(3) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar class within one (1) year from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the new salary range.

(4) Employees re-employed or reinstated or former employees probationarily appointed to a salary below the mid-point of the grade shall be considered for a performance increase in accordance with Section 5(1) below. Employees re-employed, reinstated, or former employees probationarily appointed to a salary which equals or exceeds the mid-point of the grade at the time of completion of the probationary period may be considered for a performance increase in accordance with Section 5(1) below. If such employee is not considered for a performance increase in accordance with Section 5(1), he shall be considered for a performance increase at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five percent (5%) upon promotion; if an employee's salary is above the maximum of the salary range for the class to which he is promoted, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary. An employee may receive an additional promotional increase of five percent (5%) on the first of the month following successful completion of the probationary period following promotion; if an employee's salary is above the maximum of the salary range for the class to which he is promoted, the employee may receive a lump-sum payment of five percent (5%) of his annual base salary. In no case shall the employee's salary be below the minimum of the higher grade following promotion. If the promotion is to a classification which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the Commissioner, may grant upon promotion a ten percent (10%) or fifteen percent (15%) salary increase over the employee's previous salary; if an employee's salary is above the maximum of the salary range for the class to which he is promoted, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a lump-sum payment of ten percent (10%) or fifteen percent (15%) of the employee's annual base salary. A promotional increase shall not change the employee's regular performance increase date.

(2) Demotion. An employee who is demoted may have his salary reduced to a rate which is in the grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Transfer. An employee who is transferred to a job class having the same pay grade shall be paid the same salary that he received prior to transfer.

(4) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum [or above the maximum] of the higher grade. In those cases where the employee's salary is above the maximum of the grade for the new class, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary rate. An employee whose position is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification, even if that salary is above the maximum of the new pay grade.

(5) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum of the higher grade. In those cases where the employee's salary is above the maximum of the grade for the new class, the employee may receive a lump-sum payment of five percent (5%) of his annual base salary rate. An employee whose current salary exceeds the grade maximum assigned to his class following reallocation of his position shall retain that current salary.

(6) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may receive a five percent (5%) increase upon detail to a higher class except that in no case shall the employee's salary after such increase be below minimum of the higher grade.

(7) Reversion.

(a) An employee who is returned to his former class after failure to complete the probationary period following promotion, or following detail assignment to a higher class, shall have his salary reduced to a salary rate received prior to such promotion or detail assignment and is entitled to all salary advancements and adjustments, pursuant to Section 8 or Section 9, he would have received had he not left the class even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.

(b) An employee who is returned to a position in the classified service following transfer or promotion to the unclassified service shall have his salary reduced to the rate received prior to the promotion or transfer and is entitled to all salary advancements and adjustments he would have received had he not left the class even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.

Section 5. Salary Advancements. (1) Probationary performance increases. The amount of an employee's probationary performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and the pay plan. Full-time employees, and part-time employees who complete

their probationary period with at least a satisfactory performance level shall be granted a performance increase at the beginning of the month following such completion of the probationary period. The service may be provisional or probationary. Employees completing a probationary period following promotion shall not be eligible for a probationary performance increase under this section.

(2) Annual performance increases.

(a) The amount of an employees annual performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and the pay plan. Performance increases shall be limited to permanent full-time employees and part-time employees. Employees who are on educational leave with pay shall not receive performance-based increases. Employees in classes assigned specific salary rates shall not be eligible to receive performance increases. Employees whose salaries are above grade maximum rates pursuant to Sections 3(3), 4(1), 4(2), 4(3), 4(4), 4(5), 4(6), 4(7), 5(2)(b), 5(7) and 9(2) shall be eligible to receive the same performance increases provided for employees whose salaries are within the grades except that such increases shall be calculated and paid in a lump-sum amount on the employee's performance increase date.

(b) An employee having at least a satisfactory performance level shall receive a performance increase at the beginning of the month following completion of twelve (12) months service since last receiving a performance or probationary increase. An employee whose combined annual increment payment, required under Section 5(7), and performance increase would place his salary above the maximum of the grade shall receive the full amount of increase due. Employees having below satisfactory performance levels shall be considered for annual performance increases in accordance with Section 5(2)(c).

(c) An employee whose below standard performance level does not warrant a performance increase on his regularly scheduled increase date shall be considered for such increase twelve (12) months following his regularly scheduled date.

(3) Service computation. In computing service for the purpose of determining annual performance increase eligibility, in those cases where an employee is changed from part-time to full-time, part-time service shall be counted in determining increase eligibility for a full-time employee; in those cases where an employee is changed from full-time to part-time, full-time service shall be counted in determining increase eligibility for a part-time employee.

(4) Performance increase and annual increment dates will be established:

(a) Following completion of probation, except probation following promotion, with at least a satisfactory performance level, or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(3).

(b) When an employee is on leave without pay for more than thirty (30) working days pursuant to Section 7(2) of this regulation.

(5) Performance increase and annual increment dates will not change when an employee:

(a) Is in a position in a job class which is assigned a new or different salary grade.

(b) Receives a salary adjustment as a result of his position being reallocated or reclassified.

(c) Is transferred.

(d) Receives a demotion.

(e) Is approved for detail to special duty as provided by 101 KAR 1:110, Section 4.

(f) Receives an educational achievement increase under Section 6.

(g) Returns from military leave.

(h) Has his salary advanced above the maximum of the grade or has his salary returned to the grade pursuant to Section 8 or Section 9.

(i) Is promoted or receives a promotional increase after completion of probation following promotion.

(6) No employee shall have his salary advanced to a rate above the maximum of the salary grade applicable to the class of his position except as provided in Sections 3(3), 4(1), 4(4), 4(5), 4(6), 4(7), 5(2)(b) and 5(7). An employee may retain a rate of pay above the maximum of the range as provided in Section 3(3), 4(1), 4(2), 4(3), 4(4) 4(5), 4(6), 4(7) and Section 9(2) of these rules.

(7) Annual increment. All employees shall receive statutory annual increment of five (5) percent on the employee's regularly scheduled performance increase date. The commissioner shall assign increase dates to employees not having performance increase dates. For purposes of calculating the statutory annual increment of five percent (5%), educational achievement increases under Section 6 of this regulation, employee suggestion systems awards under 101 KAR 1:150, and overtime and/or compensatory leave payments shall not be included in "gross annual salary or wages;" a lump-sum payment made to an employee pursuant to Sections 4(1), 4(4), 4(5), and 5(2)(a) of this regulation, and previous regulatory provision providing for a continuous service award shall be included in "gross annual salary or wages" in calculating the statutory five percent (5%) annual increment following such payment.

(8) Transition provisions.

(a) All provisions in Section 5(8) shall be superseded by provisions described in Section 5(1) through (7), January 1, 1983.

(b) Probationary increments. Full-time employees and part-time employees who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated prior to June 16, 1982, to a salary that is below the mid-point salary of the grade shall receive an increment limited to a five (5) percent salary advancement at the beginning of the month following successful completion of the probationary period. Full-time employees and part-time employees who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated prior to June 16, 1982, to a salary that equals or exceeds the mid-point salary of the grade at the time of completion of probation shall receive an increase limited to a five (5) percent salary increment following completion of either the probationary period or twelve (12) months service from the date of appointment, reinstatement, or re-employment. This five (5) percent limitation is in effect until December 31, 1982. Service may be provisional or probationary.

(c) Annual increments. Permanent full-time and part-time employees who have assigned annual increment dates which occur prior to December 31, 1982, shall receive an increase limited to the statutory five (5) percent salary increment on that assigned increment date.

(d) Outstanding merit increment. Any permanent full-time employee who has served for one (1) year immediately preceding the recommendation and who has not received an outstanding merit advancement within twelve (12) mon-

ths is eligible for a five percent (5%) outstanding merit advancement in his present grade in addition to any other salary advancements to which he might be entitled if:

1. His acts or ideas have resulted in significant financial savings to the Commonwealth, or to a significant improvement in service to its citizens; or
2. His job performance is outstanding. The appointing agency must submit written justification to the Commissioner and the personnel action form must be approved by the agency head and the Commissioner to be effective. In a fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as thirty percent (30%) of the number of its employees at the close of the prior fiscal year.

Section 6. Educational Achievement Increase. Subject to the approval of the Commissioner, any permanent, full-time employee who, after completion of his initial probationary period, satisfactorily completes 260 classroom hours (or the equivalent as determined by the Commissioner) of job related instruction is eligible for a lump-sum educational achievement increase of five percent (5%) of his annual base salary the first of the month following the approval of the increase.

Section 7. Return from Leave. (1) Leave with pay. The appointing authority shall grant an employee on leave with pay or returning to duty from leave with pay a performance increase on the employee's regularly scheduled increase date if such increase is warranted and the employee's performance level can be properly documented.

(2) Leave without pay. Employees returning to duty from leave without pay in excess of thirty (30) working days shall be considered for a performance increase when they have completed twelve (12) months service since the date they last received an annual increase. A maximum of six (6) months of that twelve (12) months of service may have been earned during the last period of service in which they held status prior to the leave period.

(3) Military Leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received. Satisfactory performance shall be assumed when computing the amount of performance increase(s) due.

Section 8. General Schedule Adjustment. When the Commissioner authorizes a general adjustment of all grades in the pay structure, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of grades in all cases. All salary adjustments shall be made in accordance with standards established by the Commissioner.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different salary grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in salary grade. Whenever it becomes necessary to assign a class in different salary grade due to changes defined in Section 9(1) above, the Commissioner may make a new or different salary grade applicable to a class of position. Persons employed in positions of that class at the effective date of the change in salary grade shall have their salary placed at least at the minimum salary of the higher grade. In no event shall an employee's salary be placed at a rate which provides a salary rate less than the employee received prior to the change in the salary grade. Employees whose salaries are already within the higher grade shall retain their current salaries following the adjustment. Employees in a class or classes assigned to a lower pay grade through class re-evaluation shall retain their current salary even if that salary is above the maximum rate of the lower grade. The Commissioner shall review the use of this provision for retaining employees' salaries above grade maximums and report to the Board July 1, 1984.

(3) Recruitment difficulties. Whenever the Commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same rate. When the Commissioner determines that it is not possible to relieve salary inadequacies using this provision, Section 9(2) shall apply.

(4) Increases resulting from this section shall not affect an employee's performance increase date.

Section 10. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation in kind shall be treated as part payment and its value shall be deducted from the appropriate salary rate in accordance with the schedule promulgated by the Commissioner after consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the Commissioner may authorize the payment of a supplemental shift premium for those employees directed to work an evening or night shift. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment. The employee's loss of shift differential pay shall not be a basis for an appeal to the Personnel Board. (9 Ky.R. 306; eff. 7-16-82; Am. 766; eff. 12-15-82.)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the February 23, 1983 Meeting

(Subject to subcommittee approval at the March 22 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, February 23, 1983, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning, Pat McCuiston and Bill Quinlan; Representatives Albert Robinson and James Bruce.

Guests: Representatives Adrian Arnold and Don Blandford; Carroll Roberts and Pat H. Wilson, Board of Hairdressers and Cosmetologists; Cheryl Roberts and Doug Sapp, Corrections Cabinet; John Walker, Terry Morrison, Greg Lawther, Cliff Jennings, Ked Fitzpatrick, and Donna Smith, Cabinet for Human Resources; Larry Brown, Kentucky Association of Health Care Facilities; James S. Judy, KAHCF; Barry Strafacci, Finance Cabinet; Andrew Palmer, Department of Banking; W. E. Rodawig, Household Finance Corporation; Don McCormick, Department of Fish and Wildlife; L. M. Strong and Judith Walden, Department of Housing, Buildings and Construction; Patrick Watts, Department of Insurance; Carl Larsen, Kentucky Harness Racing Commission; Larry Wilson, Martha Hall, Alex Barber and Ken Hahn, Natural Resources and Environmental Protection Cabinet; Don Hassall and Cathy Figlestahler, Bluegrass ADD; Jim Youngquist, Green River ADD; Brian Paulsen, Lincoln Trail ADD; John Mays, Northern Kentucky ADD; Donald Elias, Purchase ADD; Ray Beiting, Campbell County Fiscal Court; Garland Hoskins, Casey County Judge/Executive; Judge H. M. Ashridge and Gary Brasher, Crittenden County; Bill Froehlich, Daviess County Judge/Executive; Donnie Watson and Kenny Rawlins, Estill County; Dick Castleman, Graves County Fiscal Court; Judge Charles Lively and Oran Lawler, Grayson County; Billy Shuffett, Green County Judge/Executive; Connie Boggs, Harlan County Fiscal Court; Charles Swinford, Harrison County Judge/Executive; Frank Johnson, Johnson County Judge/Executive; Homer Lee Jackson, Knox County Judge/Executive; Terry McKinney, Lyon County Fiscal Court; Raymond Schultz, McCracken County Judge/Executive; Harold Botner, Madison County Judge/Executive; Robert Draper, Muhlenberg County; Horace West, Owen County Judge/Executive; Jesse Engle, Perry County; Jim Nickell, Rowan County Judge/Executive; Judge Bobby Stratton and Jim Rogers, Shelby County; Sam Phillips, Taylor County Judge/Executive; J. Bourbon Elliott, Washington County Court; Jenny Given, Woodford County Fiscal Court; Dan Yeast, State Local Finance Office; Phillip Singer and John Hinkle, Kentucky Retail Federation; Ronald Scott, Kentucky Municipal League; David Mansen, Jefferson County Environmental Policy Office; Paul Allgeier and Robert Lee, Jefferson County Refuse Association; Mark Johnson and Fred Creasey, KACO; Beverly Thompson and Lee Sitlinger, State Farm Insurance; Bernard Leachman, Midwest Mutual Insurance; and Katie Nienaber.

LRC Staff: Susan Harding, Joe Hood, June Mabry, Shirley Hart, Carla Arnold, Debbie McGuffey, Paula Payne, Carolyn Sparks, and Mary Helen Miller.

Press: Herb Sparrow, Associated Press.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Bruce, seconded by Representative Robinson, the minutes of the January 26, 1983, meeting were approved.

The following regulations were recommended for deferral by the subcommittee until the March 22-23 meeting:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Waste Management

401 KAR 2:180. General planning and management provision for solid waste.

401 KAR 2:185. Submission of area plan.

401 KAR 2:190. Designation as a solid waste management area.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Examiners of Social Work

201 KAR 23:020. Examination fee. (DEFERRED from February meeting.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Motor Vehicle Reparations (No-Fault)

806 KAR 39:030. Kentucky no-fault rejection form.

Department of Housing, Buildings and Construction
Plumbing

815 KAR 20:050. Installation permits.

CABINET FOR HUMAN RESOURCES
Administration

902 KAR 20:115. Ambulance services.

The subcommittee took no action on the following emergency regulations:

CORRECTIONS CABINET
Office of Community Center
Jail Standards

501 KAR 3:010E. Definitions.
501 KAR 3:020E. Administration; management.
501 KAR 3:030E. Fiscal management.
501 KAR 3:040E. Personnel.
501 KAR 3:050E. Physical plant.
501 KAR 3:060E. Security; control.
501 KAR 3:080E. Sanitation; hygiene.
501 KAR 3:090E. Medical services.
501 KAR 3:100E. Food services.
501 KAR 3:110E. Classification.
501 KAR 3:130E. Inmate programs; services.
501 KAR 3:140E. Inmate rights.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:013E. Payments for hospital inpatient services.

The subcommittee recommended that the following regulations be approved for filing:

CABINET FOR HUMAN RESOURCES
Long Term Care
900 KAR 2:020. Appeals.
Department for Social Insurance
Medical Assistance
904 KAR 1:013. Payments for hospital inpatient services.
904 KAR 1:026. Dental services.
904 KAR 1:095. Payments for nurse-midwife services.
904 KAR 1:100. Nurse-midwife services.
Public Assistance
904 KAR 2:110. Refugee assistance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
Industrial Loans
808 KAR 5:040. Retention of records; examination.
Small Loans
808 KAR 6:105. Records required.
Kentucky Harness Racing Commission
Harness Racing Rules
811 KAR 1:020. Registration and identification of horses.
811 KAR 1:055. Declaration to start; drawing horses.
811 KAR 1:070. Licensing; owners, drivers, trainers, grooms and agents.
Department of Housing, Buildings and Construction
Kentucky Building Code
815 KAR 7:020. Building code.

CORRECTIONS CABINET
Office of Community Services
Jail Standards
501 KAR 3:010. Definitions.
501 KAR 3:020. Administration; management.
501 KAR 3:030. Fiscal management.
501 KAR 3:040. Personnel.
501 KAR 3:050. Physical plant.
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501 KAR 3:090. Medical services.
501 KAR 3:100. Food services.
501 KAR 3:110. Classification.
501 KAR 3:130. Inmate programs; services.
501 KAR 3:140. Inmate rights.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
New Source Standards
401 KAR 59:260. New blast furnace casthouses.
Existing Source Standards
401 KAR 61:080. Steel plants using existing basic oxygen process furnaces.
401 KAR 61:170. Existing blast furnace casthouses.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Fish
301 KAR 1:075. Gigging, hand grabbing or snagging, tickling and noodling.
301 KAR 1:150. Waters open to commercial fishing.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Hairdressers and Cosmetologists
201 KAR 12:083. Education requirements.

The meeting was adjourned at 11:30 a.m. until March 22, 1983.

Administrative Register of kentucky

Cumulative Supplement

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NOTE: Emergency regulations expire upon being repealed or replaced.

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