Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION

FRANKFORT, KENTUCKY

VOLUME 11, NUMBER 2
WEDNESDAY, AUGUST 1, 1984

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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee will be held on August 6 and 7, 1984. For information concerning this meeting, call 502-564-8100, ext. 535.

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

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1985 Edition of the KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

Copies of support material, such as regulatory impact analyses, fiscal impact statements, and tiering statements, may be obtained from the office of the regulations compiler at a cost of fifteen cents per page.

HOW TO CITE: Cite all material in the *Administrative Register of Kentucky* by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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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Administrative Register of kentucky

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $36 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 300, State Capitol, Frankfort, Kentucky 40601.

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Public Hearings

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

This information shall be published in the *Administrative Register* at the same time as the initial publication of the administrative regulation. Any person interested in attending the hearing must submit written notification of such to the administrative body at least five days before the scheduled hearing. If no written notice is received at least five days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler immediately by telephone of the cancellation with a follow-up letter and the Compiler will note upon the face of the original administrative regulation that the hearing was cancelled.

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

If an administrative body has several proposed administrative regulations published at the same time, the proposed administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings.

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire 90 days from publication or upon replacement.)

STATEMENT OF EMERGENCY

The Kentucky Board of Medical Licensure is charged with performing all the administrative functions of the Commonwealth in regard to the licensure and discipline of physicians. Pursuant to an Act of the 1984 General Assembly, the Kentucky Medical and Osteopathic Practice Act, KRS 311.530, et seq., was amended. The requirements for medical and osteopathic licensure were amended in several important aspects, and it is necessary that the Board promulgate regulations to allow the new law to be carried out appropriately. Medical and osteopathic licensure is a complicated matter, and the absence of appropriate regulations could cause many difficult problems.

Because the new statutes become effective July 13, 1984, and because applications for licensure are received in this office on a daily basis, it is imperative that regulations consistent and appropriate to the new statutes be enacted so that the business of medical licensure can proceed. The current regulations complement the present law but are inconsistent with the new law. Because the regulations must "match" the law under which they are promulgated it is imperative that the regulations change as the statute changes.

Because of the need for appropriate timing in the passage of these regulations, it is not practical that they be implemented through the process normally followed for ordinary regulations. The Board intends to replace this emergency regulation by permanent, ordinary regulation which will be submitted for review under the normal processes in the very near future.

In conclusion, it is asserted that an emergency situation does exist which requires the implementation of this regulation in order to properly implement the new laws regarding medical and osteopathic licensure.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
C. WILLIAM SCHMIDT, Secretary
Board of Medical Licensure

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:021E. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs.

RELATES TO: KRS 311.530 to 311.620, 311.990, 311.271
PURSUANT TO: KRS 311.565
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards for approval of medical and osteopathic schools, colleges and universities in regard to the issuance and renewal of licenses and permits to practice medicine or osteopathy in the Commonwealth. The further purpose of this regulation is to assure that physicians obtain sufficient postgraduate training to enable them to practice with competency within the Commonwealth.

Section 1. Approval Necessary for Licensure. An applicant shall not obtain or retain any license or permit issued by the board unless and until the applicant provides sufficient proof that he or she is a garaduate of a medical or osteopathic school, college or university which has been approved by the board. An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) may, however, be granted such licensure without the board's prior approval of the medical or osteopathic school, college or university upon sufficient proof that the particular school does exist and the applicant is a graduate thereof. No other license or permit issued pursuant to any other statutory or regulatory provision shall be issued unless and until the applicant's medical or osteopathic school, college or university has been fully approved. The school approval requirement will not be excused because information concerning the school is not readily ascertainable.

Section 2. Medical and Osteopathic Schools Located Within the United States or Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools, colleges and universities located in the United States or Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:

(1) Located in the United States, its territories and protectorates and approved/accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association; or

(2) Located in Canada and approved/accredited by the Canadian Medical Association.

Section 3. Medical and Osteopathic Schools Located Outside the United States and Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools located outside the United States and Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:

(1) Officially recognized in good standing by the country in which the school, college or university is located;

(2) Registered as a medical school, college or university in either the World Health Organization directory or the World Directory of Medical Schools; and

(3) Possesses a basic course of clinical and classroom medical instruction of not less than thirty-two (32) months in length that is conducted under the direct authority of the medical school, college or university.

Approval of an institution under this section should be considered in conjunction with the other requirements for licensure of graduates of medical schools, colleges and universities located outside the United States and Canada. Approval under this section should not be interpreted as a statement by the board that the particular institution is equivalent to institutions approved pursuant to Section 2 of this regulation.

Section 4. Denial or Withdrawal of Approval. The board, in its discretion, may deny or withdraw approval of any medical or osteopathic school if the particular school, college or university fails to meet the requirements for approval as established in the preceding sections or if, in the board's opinion, the approval of the particular school, college or university would not be in the best interests of the Commonwealth. If approval is denied or withdrawn the board shall issue an order delineating the grounds upon which denial or withdrawal of approval is based.

Section 5. Application of KRS 311.271. (1) An applicant shall not obtain any license or permit issued by the board unless and until the applicant provides written proof that he or she has been credited with not less than sixty (60) transferable units of study by a college or university accredited by the Southern Association of Colleges and Schools or an accrediting agency recognized by the Southern Association of Colleges and Schools; provided, however, that the executive director may determine the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

(2) It is the declared policy of the Commonwealth that a physician, who becomes initially enrolled in a school of medicine or osteopathy after June 13, 1968, should not be authorized to practice medicine or osteopathy in this state unless and until the physician can provide satisfactory evidence that he or she has fulfilled the premedical or preosteopathic undergraduate requirement delineated in subsection (1) of this section. Therefore, the board will not issue any license or permit to an applicant except upon the fulfillment of this requirement.

Section 6. Hearings. The board, in its discretion, may direct that formal or informal hearings be held in connection with the approval, denial of approval or withdrawal of approval of any medical or osteopathic school, college or university, or in the determination of qualification pursuant to KRS 311.271.

Section 7. Amount of Postgraduate Training Required. (1) All applicants for regular licensure who are graduates of medical and osteopathic schools located within the United States or Canada shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

(2) All applicants for regular licensure who are graduates of medical and osteopathic schools located outside the United States and Canada shall provide written proof of having completed three (3) full years of postgraduate training approved by the board.

(3) All applicants for limited licensure-institutional practice shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

Section 8. Postgraduate Training Programs Approved by the Board. (1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the Accreditation Council for Graduate

Medical Education (ACGME) are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(2) All postgraduate training programs in hospitals and institutions located in Canada and approved by the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

Section 9. Fellowship Training in the United States or Canada. The board will consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second or third year of required postgraduate training approved by the board pursuant to this regulation.

Section 10 .Repeal of Regulations. The following regulations of the board are hereby repealed: 201 KAR 9:020, 201 KAR 9:060, 201 KAR 9:080 and 201 KAR 9:085.

C. WILLIAM SCHMIDT
Executive Director
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 12, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the regulation and inspection of amusement rides or attractions have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the department promulgate emergency regulations to become effective on the date the law goes into effect. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
DAVID E. BOSWELL, Commissioner
Department of Agriculture

DEPARTMENT OF AGRICULTURE

302 KAR 16:010E. Procedure for obtaining a permit for operating amusement rides or attractions.

RELATES TO: KRS 247.232
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Before operating any amusement ride or attraction in this state the owner or operator of such ride or attraction shall provide to the commissioner a written itinerary showing the location of the first set-up as well as the balance of the Kentucky itinerary as known on the date of notification. Such itinerary shall include the playing dates and location; including street and address number where the set-up is within a city or town. The itinerary shall also include the operating period at each site and shall be delivered to the commissioner at least fourteen (14) days prior to the first scheduled set-up.

Section 2. The itinerary set forth in Section 1 of this regulation shall be updated and submitted to the commissioner when cancellations or additional locations are added to the itinerary in Kentucky for the period covered by the permit.

Section 3. On or before the date of the initial inspection of the calendar year the applicant shall provide proof of liability insurance on each ride or attraction in the amount of $1,000,000 due to all bodily injuries or deaths per occurrence. Such proof of insurance must also provide that the insurer will not cancel such policy without thirty (30) days written notice to the commissioner. Proof of insurance may be either the policy itself or a certified statement issued by the insurer attesting to the above requirements. The proof of insurance shall include a listing of the rides or attractions insured or a statement to the effect that all rides or attractions operated under the supervision of the insured are covered.

Section 4. Each owner or operator of an amusement ride or attraction shall submit to the commissioner or his designated representative an application to be provided by the commissioner. A twenty-five (25) dollar permit fee for each ride or attraction shall accompany the application for a permit. Said permit shall not be issued until each ride or attraction has been inspected and found to be in compliance with KRS 247.232 through 247.236 and applicable regulations. To assure continued safety of amusement rides or attractions, and in addition to the initial inspection provided for pursuant to KRS 247.234 through 247.236, periodic safety inspections may be conducted at various times throughout the term of the permit according to the playing locations as listed in the itinerary.

Section 5. Upon receipt of proper application and permit fee and upon completion of satisfactory inspection as set forth in Sections 1, 2, 3, and 4 of this regulation the commissoner shall issue a permit in the name of the applicant. Accompanying such permit shall be a seal. The owner or operator shall affix this seal to a permanent and accessible section of the ride or attraction for which such permit was issued.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: June 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the regulation and inspection of amusement rides or attractions have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the department promulgate emergency regulations to become effective on the date the law goes into effect. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
DAVID E. BOSWELL, Commissioner
Department of Agriculture

DEPARTMENT OF AGRICULTURE

302 KAR 16:020E. Operation of amusement rides or attractions.

RELATES TO: KRS 247.232, 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To establish guidelines for the operation and inspection of amusement rides or attractions.

Section 1. All amusement rides or attractions must bear a seal as required by regulation. If the required seal does not appear on the ride, the ride may be stopped until proof of a valid permit is furnished.

Section 2. All amusement rides or attractions must be maintained in good electrical and mechanical condition and be under the supervision of a competent operator at all times when the ride or attraction is in operation.

Section 3. All amusement rides or attractions that are potentially hazardous to bystanders must be adequately fenced so as to provide protection to spectators and riders. In the case of aerial rides or swings, a barrier must be present providing a safe distance from the outmost arc of such swing or aerial ride. All power units must be shielded so as to afford public safety.

Section 4. No amusement ride or attraction or its power unit shall be so located as to present a fire hazard to adjacent buildings, exhibits or other structures. In the case of a riding device using gasoline engines, storage of gasoline in or adjacent to the riding device must be in an approved safety container and at a safe distance from any ride. All electrical wires leading to and from a riding device must be protected and insulated so as to present no shock hazard. All electrical equipment must be properly grounded. All electrical junction boxes must be locked or sealed.

Section 5. The operator of an amusement ride or attraction must ensure that no one is permitted on such ride who appears to be in an intoxicated condition, is not wearing some foot protection such as shoes or sandels, or carrying any article which may be dropped from the ride.

Section 6. Properly charged fire extinguishers shall be present at all rides or attractions in accordance with state and local standards.

Section 7. The permit issued pursuant to KRS 247.232 through 247.236 shall be posted at all times while the ride or attraction is in operation in a conspicuous place on or near the ride or attraction.

Section 8. The Kentucky Department of Agriculture guideline handbook for inspection of amusement rides and attractions plus amendments thereto are incorporated by reference.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the regulation and inspection of amusement rides or attractions have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the department promulgate emergency regulations to become effective on the date the law goes into effect. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
DAVID E. BOSWELL, Commissioner
Department of Agriculture

DEPARTMENT OF AGRICULTURE

302 KAR 16:030E. Determination of safety violations which cannot be corrected immediately.

RELATES TO: KRS 247.232, 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To determine safety violations which cannot be corrected immediately.

Section 1. The amusement safety inspector shall determine the nature and severity of safety violations and shall determine when such violations cannot be corrected immediately within the meaning of KRS 247.232 through 247.236. Such determination shall be made based upon accepted industry standards, applicable law and regulations promulgated by the commissioner.

Section 2. An amusement ride or attraction operating in this state without a valid permit shall be deemed a safety violation which cannot be corrected immediately.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the regulation and inspection of amusement rides or attractions have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the department promulgate emergency regulations to become effective on the date the law goes into effect. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
DAVID E. BOSWELL, Commissioner
Department of Agriculture

DEPARTMENT OF AGRICULTURE

302 KAR 16:040E. Correction of safety violations and right to re-inspection.

RELATES TO: KRS 247.232, 247.234, 247.236
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To further clarify the procedure for determining the nature and severity of safety violations.

Section 1. If an inspector finds a condition on a ride or attraction which does not comply with KRS 247.232 through 247.236 and regulations of the department, the inspector shall determine whether said violation is one that cannot be corrected immediately within the meaning of KRS 247.234. If the inspector determines that said violation cannot be corrected immediately the inspector shall issue a stop operation order prohibiting the operation of such ride, attraction or part thereof found to be in violation. The safety inspector and the owner or operator may by agreement establish a time limit when such violation is to be corrected. After the expiration of such time period the owner or operator of said ride or attraction must either correct such violation and certify in writing to the commissioner that such violation has been corrected or request a further determination by the commissioner of the nature and severity of the safety violation in question.

Section 2. If upon a subsequent inspection requested pursuant to Section 1 of this regulation it is determined that the safety violation that is the subject of the stop operation order is one that can be corrected immediately the commissioner shall not charge the owner or operator the fee required pursuant to KRS 247.234.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the regulation and inspection of amusement rides or attractions have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the department promulgate emergency regulations to become effective on the date the law goes into effect.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
DAVID E. BOSWELL, Commissioner
Department of Agriculture

DEPARTMENT OF AGRICULTURE

302 KAR 16:050E. Licensing fee for amusement rides or attractions.

RELATES TO: KRS 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To establish procedure for payment of the permit fee required under KRS 247.234.

Section 1. The permit fee required pursuant to KRS 247.234 shall be due and payable on January 1, 1985 and on January 1 of each succeeding year thereafter.

Section 2. The permit fee for the period from July 13, 1984 to December 31, 1984 shall be twelve dollars and fifty cents ($12.50) for each ride or attraction operating in the state of Kentucky for that period.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Ordinary regulations concerning the Kentucky Grain Insurance Fund and Dealer Law have been started through the regulation process. However, these regulations will not become law until after the effective date of the legislation. It is imperative therefore that the Department promulgate emergency regulations to become effective on the date the law goes into effect.

This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

DEPARTMENT OF AGRICULTURE

302 KAR 20:170E. Movement of equine.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 257.030
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To provide guidelines for the movement of horses affected by equine viral arteritis.

Section 1. For purposes of this regulation: (1) "Infected farm" shall mean those premises which have been diagnosed as having horses infected with equine viral arteritis.

(2) "Exposed farm" shall mean those farms having mares bred on infected farms or farms where epidemiological studies have indicated possible infection.

(3) "EVA" shall mean equine viral arteritis.

Section 2. Horses on infected farms may move from the premises no earlier than thirty (30) days following date the last clinical symptom of EVA was diagnosed on the infected farm. In no event shall horses on infected farms be moved until an individual farm evaluation has been conducted and authorization for such movement has been obtained from the chief livestock sanitary official.

Section 3. Horses on exposed farms may move under the following conditions: (1) Horses vaccinated against EVA located on exposed farms shall be moved not less than thirty (30) days following the date which the horse was last bred.

(2) Nonvaccinated horses bred to an infected stallion shall not be moved unless negative to a blood test for EVA taken at least twenty-one (21) days after last breeding.

Section 4. Animals not exposed, infected or under study by the chief livestock sanitary official may move without further restriction.

Section 5. If further cases of EVA are discovered the chief livestock sanitary official may take action as is reasonably necessary for the prevention and/or control of EVA in the Commonwealth of Kentucky. The actions of the chief livestock sanitary official shall be based on research and clinical data available to him at the time such action is taken.

Section 6. Thoroughbred breeding may commence on individual farms and for specific horses by requesting approval for such horses from the chief livestock sanitary official. Such requests and approval shall be made in writing.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

The disease viral equine arteritis is of great concern to the horse industry and the people of the Commonwealth of Kentucky. This disease has been diagnosed on several farms in this state. It is imperative that further steps be taken to control this disease in horses.

Pursuant to KRS 257.020 and 257.030, the State Board of Agriculture may promulgate regulations for the eradication, prevention and control of communicable diseases in livestock. The time needed to promulgate ordinary administrative regulations will be too long. Immediate action is needed via emergency regulations.

This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

DEPARTMENT OF AGRICULTURE

302 KAR 34:010E. Definitions.

RELATES TO: KRS 251.610, 251.640
PURSUANT TO: KRS 251.700
EFFECTIVE: July 12, 1984
NECESSITY AND FUNCTION: To further clarify the Kentucky Grain Insurance Fund Act and Dealer Law.

Section 1. Participant or participation in the Kentucky grain insurance fund shall mean:

(1) Any person who has in good faith contributed to the Kentucky grain insurance fund prior to meeting the criteria of the claimant shall be a participant in the Kentucky grain insurance fund.

(2) Persons who have marketed grain on a deferred or delayed pricing contract shall be participants in the Kentucky grain insurance fund.

(3) Any person storing grain with a dealer or warehouseman who has not previously contributed to the fund may participate therein and obtain all the protection of the fund by remitting one-half (½) cent per bushel on all grain stored at the time such grain is placed in the custody or control of the dealer or warehouseman.

Section 2. Processing shall mean the method by which grain is prepared for further marketing of the grain.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.

STATEMENT OF EMERGENCY

Senate Bill 107 passed by the 1984 General Assembly creates a new section of KRS Chapter 189 and becomes effective July 13, 1984. This law allows the Transportation Cabinet at its central office in Frankfort and at the 12 highway district offices to issue special overweight/overdimensional permits for operators of equipment used for soil conservation purposes, residential construction purposes, public utility service purposes and other specialized equipment such as oil well and mine equipment, truck cranes and loaders. This emergency regulation establishes the procedures necessary to issue such permits. It is necessary that it become effective at the same time Senate Bill 107 does. This emergency regulation will be replaced by an ordinary administrative regulation promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:015E. Special overweight/overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort.

RELATES TO: KRS 189.270, Senate Bill 107
PURSUANT TO: KRS 174.080, Senate Bill 107
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: A new section of KRS Chapter 189 was created by Senate Bill 107 passed by the 1984 General Assembly to allow for certain proposed overdimensional permits to be issued at the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort. This regulation establishes procedures necessary to issue such permits.

Section 1. (1) The twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort may issue special overdimensional permits for operators of equipment used for soil conservation purposes, residential construction purposes, and public utility service purposes and other specialized equipment, such as oil well and mine equipment and truck cranes and loaders.

(2) Such special permits are issued only to vehicles which are properly licensed in Kentucky, if the vehicles are required to be licensed in Kentucky.

(3) The permit shall be issued for a movement of a specific vehicle, load, machine, or piece of equipment. The load, machine, or piece of equipment must be clearly identifed or described (for example, D-8 dozer).

Section 2. Height. There is no set height limit except as determined by underpasses and bridges; however, fifteen (15) feet in most cases is the highest practical for moves over Kentucky highways.

Section 3. Weight. (1) No gross or axle overweight will be permitted on combination units of less than five (5) axles nor on a single unit except off road equipment such as scraper, mobile cranes or other self propelled units and in no case may axle weight exceed 600 lbs. x aggregate tire rim inch.

(2) Kentucky licensed vehicles will not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(3) Following are axle weights and gross weights which may be permitted with use of four (4) wheels and tires per axle at least 10.00 rim inch size:

Single axle—24,000
Tandem axle—48,000 (minimum 42' spacing)
Tri axle—60,000 (minimum 42' spacing between axles)
Five (5) axle combination units are not to exceed 96,000 lbs. gross.
Six (6) axle combination units are not to exceed 120,000 lbs gross.

(4) Since bridge capacity is the controlling factor in most instances, the above-noted maximum weights may not be permitted unless all bridges involved are of sufficient capacity to accommodate the load. No permit shall be issued by a district office of the Department of Highways, if the gross load exceeds 120,000 lbs.

Section 4. Any blade or bucket attached to the equipment which exceeds fourteen (14) feet in width must be removed for highway movement. A blade which has been removed may be moved on the same truck without being considered a divisible load.

Section 5. The permit will be valid for ten (10) days and need not be limited to a single movement. The fee for the issuance of the permit will be thirty (30) dollars. The ten (10) day permit will be issued for movements of loads over twelve (12) feet wide and shall not exceed fourteen (14) feet wide. Applications for an annual permit for loads twelve (12) feet wide or less can be made to the Division of Motor Carriers, Qualifications/Permits Branch, Overweight/ Overdimensional Permit Section, Frankfort, Kentucky. No other overweight/overdimensional permit may be issued by district offices of the Department of Highways.

Section 6. One (1) lead escort shall accompany equipment on two (2) lane highways if the blade or bucket extends over the bed of the transporting vehicle if the width of the equipment exceeds ten (10) feet, six (6) inches. One (1) lead escort vehicle and one (1) following escort vehicle shall accompany equipment on two (2) lane highways if the width of the equipment or load exceeds twelve (12) feet. Any vehicle whose slow rate of speed due to the nature of its load or due to the nature of the vehicle itself poses a hazard to the traveling public, must have one (1) following escort vehicle. Red flags twelve (12) inches by twelve (12) inches square must be displayed on both side front bumpers of the lead escort vehicle.

Section 7. (1) Permits are valid during daylight hours only from Monday thru Saturday noon, except for national holidays. In connection with these holidays, travel is not permitted from noon the preceding day until daylight of the next permissible day. The term "daylight hours" means the period one-half (1/2) hour before sunrise and one-half (1/2) hour after sunset.

(2) The special permit will only be issued for movements within the county in which the vehicle is based or the applicant maintains headquarters and movement into an adjoining county and return to headquarters.

Section 8. Single trip permits that exceed fourteen (14) feet wide or where height, weight, or length exceeds the limits set forth in this section must be applied for with the Division of Motor Carriers, Qualifications/Permits Branch. These permits will be considered on an individual trip basis and with specific routing.

Section 9. Nothing herein shall prohibit the issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or may be detrimental to public safety.

PATRICIA K. FOLEY, Acting Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 enacted by the 1984 General Assembly becomes effective July 13, 1984. This law provides that vehicles primarily transporting coal may be specially registered and that the operation of such specially registered vehicles will be exempted from the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2) and (3). This administrative regulation provides for the dissemination of such information to Kentucky highway use taxpayers. It further provides for highway use taxpayers eligible for such tax exemptions to notify the Transportation Cabinet, Department of Vehicle Regulation of their eligibility for these tax exemptions. It is necessary that this regulation become effective at the same time as HB 25 so that the information can be timely disseminated to the taxpayers and the exemption claims returned during the first quarter of Fiscal Year 1984-85. An ordinary administrative regulation to replace this emergency regulation has already been filed with the Administrative Regulations Compiler in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:130E. Kentucky highway motor fuel surtax and weight distance tax exemption.

RELATES TO: KRS 138.660, House Bill 25 of the 1984 General Assembly
PURSUANT TO: KRS 138.725, 174.080
EFFECTOVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 186.057 (Section 6 of House Bill 25, enacted by the 1984 regular session of the General Assembly, and effective July 13, 1984) provides that vehicles primarily transporting coal may be specially registered, and that the operation of such specially registered vehicles will be exempted from the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2), (3). This regulation provides for the dissemination of this information to Kentucky highway use taxpayers, and further provides for highway use taxpayers eligible for these tax exemptions to notify the Department of Vehicle Regulation of the fact of their eligibility for such tax exemptions. This notification will enable the Department of Vehicle Regulation to properly qualify this class of taxpayers for the reporting and payment of their normal highway use motor fuel taxes, and to be provided with the appropriate tax reporting forms. It is essential that this information be forwarded and received and that the Division of Motor Carriers be informed as to the identity of those taxpayers proposing to claim such tax exemptions, in order for such taxpayers to be properly qualified and to receive the proper tax forms for the quarter ending September 30, 1984.

Section 1. The Department of Vehicle Regulation shall notify that class of highway use taxpayers which may be entitled to exemption from the reporting and payment of the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2) and (3) of the fact of and information relating to their potential entitlement. Such taxpayers shall be notified at the time they are forwarded their regular tax reporting forms for the quarter ending June 30, 1984.

Section 2. (1) Those taxpayers who intend to claim the weight distance tax and motor fuel surtax exemptions authorized by KRS 186.057 are required to affirmatively complete and file with the department an appropriate application form, evidencing the intent of affected taxpayers

to claim such tax exemption. A copy of the appropriate forms and instructions are available from the Department of Vehicle Regulation, Division of Motor Carriers, P. O. Box 2007, Frankfort, Kentucky 40602.

(2) Completed tax exemption application forms must be received by the department prior to October 1, 1984, if applicable to any part of the quarter ending September 30, 1984.

ATRICIA K. FOLEY, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9:00 a.m.

STATEMENT OF EMERGENCY

Senate Bill 94 passed by the 1984 General Assembly amends KRS 186.042 to require that handicapped license plates will expire July 31 rather than December 31 of each year. This administrative regulation is necessary to provide procedures for issuance and cost of the license plate during the transition period from December 31 to July 31 i.e., the first year the law is in effect. It is necessary that this administrative regulation be adopted on an emergency basis so that it can become effective at the same time SB 94 does. An ordinary administrative regulation to replace this emergency regultion will be promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Tranposrtation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:011E. Handicapped license plates.

RELATES TO: KRS 186.042
PURSUANT TO: KRS 186.042
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 186.042 as amended by the 1984 General Assembly empowers the Transportation Cabinet to adopt rules and regulations to implement the provisions as set forth therein for the issuance of handicapped license plates. This regulation implements the provisions of KRS 186.042.

Section 1. (1) Any individual renewing a handicapped license plate which will expire December 31, 1984, shall receive a decal effective for the period of January 1, 1985, through July 31, 1985, for a state fee of $6.71 and a clerk's fee of $1.00.

(2) Any person who purchases a handicapped plate for the first time after July 13, 1984, will be sold a decal expiring July 31, 1985, for a state fee of $11.50 and a clerk's fee of $1.00.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 565 passed by the 1984 General Assembly amends KRS 186.173 to provide that Kentucky National Guard retirees be eligible to apply for a National Guard license plate. This administrative regulation amends an existing regulation which promulgated the procedures for applying for and issuing a National Guard license plate. This amendment specifies that a retiree must present an application for a National Guard license plate signed by the custodian of military records, Department of Military Affairs as proof of twenty -five years of service. This administrative regulation is needed on an emergency basis so that it will become effective at the same time HB 565 becomes effective. An ordinary regulation will be promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Cabinet for Human Resources

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 9:013E. National Guard license plates.

RELATES TO: KRS 186.173
PURSUANT TO: KRS 186.173
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 186.173 as enacted by the 1976 General Assembly and amended by the 1984 General Assembly, empowers the [Department of] Transportation *Cabinet* to adopt rules and regulations to implement the provisions as set forth therein for the issuance of a National Guard license plate. This regulation is intended to implement the provisions of KRS 186.173.

Section 1. A license plate issued under the provisions of KRS 186.173 may be validated for future years registration by the placing of a decal thereon.

Section 2. Before a vehicle bearing a National Guard plate may be sold or transferred, the member of the National Guard owning such a vehicle shall apply to the county clerk and for a clerk's fee of one (1) dollar be issued a regular registration plate and certificate of registration. Such sale or transfer shall occur simultaneously with such registration.

Section 3. A member of the National Guard may have the special plate transferred from one (1) vehicle to another, if both vehicles are owned by him. To accomplish this transfer, he must purchase a regular registration plate for the vehicle from which the National Guard plate is removed and pay the appropriate fees for having the National Guard plate changed from one (1) vehicle to another.

Section 4. The only vehicle which may bear and use a National Guard plate, under the provisions of KRS 186.173, is a vehicle of a kind required to be licensed under the provisions of KRS 186.050(1) excluding taxicabs, airport limousines and U-Drive-Its.

Section 5. When a person, under the provisions of KRS 186.173, takes the National Guard license plate to the county clerk for reissuance or cancellation, such plate shall be accompanied by the registration receipt and any and all other required documents.

Section 6. In the event a National Guard license plate is lost or stolen, the owner thereof may secure another National Guard license plate by the making of an affidavit and the payment of the fees as set forth in KRS 186.180.

Section 7. No National Guard license plate shall be used on a motor vehicle other than the one for which it was issued.

Section 8. If the applicant for a National Guard license plate is a National Guard retiree, such application must be signed by the custodian of military records, Department of Military Affairs. The custodian's signature shall certify that the applicant is a retiree of the Kentucky National Guard with twenty-five (25) years of service.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 was enacted by the 1984 General Assembly and becomes effective July 13, 1984. This emergency administrative regulation promulgated pursuant to that law amends an existing regulation dealing with the weight distance tax and its various requirements. As amended, the new regulation incorporates all of the old regulation and in addition requires that anyone wishing to claim the exemption from the weight distance tax and the surtax KRS 138.660(2) and (3) must file an application for that exemption. It further provides for the assignment of a coal shipper's license number to be used in maintaining tax data. Finally, as amended it requires the maintenance of various tax information and the requirement in some instances for the posting of a bond as surety for the collection of the ton tax. It is necessary that this regulation become effective at the same time as House Bill 25. A regulation in contemplation of a statute will be filed in accordance with the requirements of KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 9:074E. Kentucky highway use license, records and taxes.

RELATES TO: KRS [Chapter] 138.*655 to 138.725*
PURSUANT TO: KRS [13.082,] 138.725
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a license number to each motor carrier, and the carrier shall cause said license number to be displayed on a motor vehicle identification card issued it by the department. The card shall be carried in each vehicle operated by the carrier at all times.

Section 2. Bonds-Cash Deposit. *(1)* Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 and 138.670 shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. The bond will be conditioned as required in KRS 138.670, and the department shall administer the bond as provided in KRS 138.670.

(2) In addition to the bond imposed in subsection (1) of this section, every business engaged in mining, processing, transporting or selling coal in excess of the established weight laws pursuant to a cooperative agreement with the Transportation Cabinet, or a certified transportation plan or subject to the ton tax provided by law shall file with the cabinet upon request a corporate bond, cash bond, or security approved by the cabinet. The minimum amount of the bond shall be $5,000 and the maximum amount shall be one (1) year's liability for the taxes imposed. The bond shall be in such form and amount as the cabinet shall prescribe and the cabinet shall administer the bond as provided in KRS 138.670.

Section 3. Registration for *Highway Use* [Weight Distance] Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of a tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax is due under KRS 138.660 or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky. A motor carrier identification card shall be issued which contains the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this subsection.

(c) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.665.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification card is issued or the duly assumed business name of the licensee, as it appears on the license. All licensees are required to use the name utilitized in the application for the license in all documents relating to their operations and in all correspondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, *Division of Motor Carriers* [Fuel and Roadway Taxation Branch], Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 6. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate rules and regulations. The licensee shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required cab card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A motor vehicle which is leased to a certificated carrier will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 7. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in Kentucky and the Kentucky motor fuel tax has been paid. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) The valid receipt is one (1) which:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the state of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of units; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

(3) [(2)] Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove on-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

(b) Credit for fuel purchase receipts other than the taxable units shall not be allowed.

(4) [(3)] In instances where fuel is purchased by trip leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

Section 8. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, or these regulations, its Kentucky Highway Use Tax License may be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 9. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all cab cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a cab card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

Section 10. Coal Shippers License and Tax Status Changes of All Motor Carriers. (1) All persons liable or responsible for payment of ton tax or payments due to cooperative agreements and transporting coal over the state maintained highways system by motor vehicles exceeding the gross weights or gross axle weights prescribed by the Secretary of Transportation pursuant to KRS 189.222 shall obtain an approved tax reporting license from the Department of Vehicle Regulation. Prior to the issuance of the tax reporting license, the licensee must obtain a certified transportation plan from the Department of Vehicle Regulation in accordance with 601 KAR 35:020. The Department shall assign each taxpayer a license number.

(2) Licensees referenced in subsection (1) of this section that have an approved cooperative agreement shall pay their tax in accordance with the terms of the cooperative agreement.

(3) Licensees referenced in subsection (1) of this section that do not have a cooperative agreement shall report and pay their coal ton tax as follows:

(a) The coal ton tax shall be reported on the requisite forms as prescribed in the manual published by the Transportation Cabinet titled, "Forms Applicable to Coal Transportation," adopted July 13, 1984, a copy of which is on file with the Legislative Research Commission.

(b) The coal ton tax shall be reported and paid monthly.

(c) The coal ton tax returns are due within twenty (20) days following the close of each monthly period.

(4) The exempt and/or non-exempt status of each vehicle in regard to Kentucky motor fuel surtax or weight distance tax may be changed only once during each quarter, (January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 31). A tax liability shall not change because of a status change, until the first day of the next succeeding quarter after the status is changed. The change from non-exempt status to exempt status requires that an application be filed with the Transportation Cabinet.

Section *11.* [10.] Tax Liability and Protest Procedures. (1) The licensee will be mailed a tax statement, found as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 138.110 in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the department's legal section for collection.

Section *12.* [11.] Penalties. In addition to any other penalties which may be imposed under KRS 138.990 and any other applicable laws, the licensee shall be subject to the civil penalties provided for in KRS 138.775.

Section *13.* [12.] Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the state of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section *14.* [13.] Records Disposition. The department will retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license will be retained two (2) years after cancellation.

Section *15.* [14.] Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest.

Section *16.* [15.] Licensee taxpayers, for purposes of ease in tax reporting compliance, and department administration and audit convenience, may, upon written request to the department and receipt of written permission from the department, report miles operated upon Kentucky highways on the basis of the current Household Goods Bureau mileage guide, and supplements thereto, in lieu of reporting on the basis of actual miles operated, provided, however, that such mileages are reported in respect to movements between the points and over the routes actually operated, and provided that such mileages would not result in a consistent understatement of actual miles operated on Kentucky highways.

Section 17. Maintenance of Records. (1) Licensees reporting and paying taxes under the cooperative agreement, certified transportation plan, or ton tax provision shall keep and maintain records of all coal shipments over the state maintained public highways.

(2) Each licensee shall also maintain weight tickets, bona fide third party documents or other documents to accurately verify tonnage that will reflect the true tonnage transported over said highways and the distance that such tonnage was transported over such highway.

(3) The weight ticket or third party document shall include but not be limited to the following:

(a) Name and identification number of the mine owner, severer, processor, broker or shipper.

(b) Name and KYU number of person transporting coal.

(c) Transporter's assigned unit vehicle number.

(d) Points of origin and destination.

(4) All records shall be maintained for five (5) years for audit and tax purposes.

(5) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same informa-

tion as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 65 passed by the 1984 General Assembly requires in KRS Chapter 304 that the standards for a motor vehicle accident prevention course be set by the Transportation Cabinet. Kentucky licensed drivers 55 years of age or older who successfully complete such a course are eligible for a reduction in their automobile insurance premiums. This new administrative regulation sets standards for such motor vehicle accident prevention courses. It is necessary to adopt it on an emergency regulation will be promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:040E. Motor vehicle accident prevention course.

RELATES TO: KRS 304.13-063
PURSUANT TO: KRS 304.13-063(5)
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 304.13-063(1) requires that standards for a "motor vehicle accident prevention course" be set by the Transportation Cabinet, and furthermore, requires that such course include a minimum number of hours of either classroom and/or field driving instruction. This regulation is necessary to set standards for the motor vehicle accident prevention course.

Section 1. Definition. "Course" or "motor vehicle accident prevention course" means a course, approved by the Transportation Cabinet pursuant to KRS 304.13-063, that shall be open to any licensed driver of this state who is fifty-five (55) years of age or older for the purpose of qualifying for an insurance premium reduction.

Section 2. No person shall offer, conduct or engage in the business of offering or conducting a motor vehicle accident prevention course pursuant to KRS 304.13-063 without obtaining the prior approval of the Transportation Cabinet pursuant to the provisions of this administrataive regulation. A person shall file an application for approval of a course with the Transportation Cabinet; and the application shall be on the form furnished by the Transportation Cabinet and shall contain the information required by the Transportation Cabinet. Said application forms can be obtained from the Transportation Cabinet, Division of Driver Licensing, State Office Building, 2nd Floor, Frankfort, Kentucky 40622.

Section 3. The completed application shall be accompanied by the following:
(1) A copy of the proposed motor vehicle prevention course materials, curriculum, and promotional documents;
(2) The name, address, and social security number of each instructor who shall conduct the course; and
(3) A copy of the manual and course materials for the instructor's preparation course.

Section 4. In the event the course application is approved, the course approval shall be valid for not more than a two (2) year period. Any person who has obtained approval for a course shall comply with the following requirements:
(1) Apply to the Transportation Cabinet for approval if there are any proposed additions or deletions to a previously approved course or its curriculum;
(2) Perform all necessary administrative functions in connection with the course;
(3) Obtain approval from the Transportation Cabinet of the form of the certificate which shall be issued upon course completion as specified in subsection (4) of this section;
(4) Provide each participant satisfactorily completing the course with an approved certificate of course completion;
(5) Maintain records which indicate the name, address, social security number and date of course of those individuals who have completed the course within the previous three (3) years;
(6) Provide and train instructors to conduct courses;
(7) Conduct the course in accordance with the description and curriculum approved by the Transportation Cabinet;
(8) Provide the Transportation Cabinet with a schedule of class dates, times, and locations; and
(9) Authorize and permit the Transportation Cabinet to audit the records of the approved course and to monitor and evaluate any and all portions of the course including but not limited to the classroom facility, field driving, the use of the instructional materials, the qualifications of instructors and the actual presentation of the course.

Section 5. No course shall be approved unless the course shall have a minimum of four (4) hours of classroom or field driving instruction; and the curriculum of the course shall at least include but shall not be limited to the following subject matters:
(1) Concept of accident preventability including a discussion of the magnitude of traffice accident problems;
(2) Techniques for defensive driving and handling critical situations, including but not limited to:
(a) Interpreting events that require evasive action;
(b) Determining the appropriate response to situations caused by mechanical failure of the motor vehicle;
(c) Determining risk factors created by a variety of psychological, social, and physical factors that can facilitate or inhibit the functions required in driving, including but not limited to:
1. The effects and compensatory measures concerning the relationships between alcohol, drugs, or medication and driving performances;
2. The negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performances; and
3. The age-related physical changes of drivers fifty-five (55) years of age and older.
(3) Kentucky traffic laws and regulations, vehicle dynamics, capabilities, limitations, and highway environmental factors including but not limited to:
(a) Traffic laws and regulations, such as signs, signals, and markings, right-of-way requirements, and speed;

(b) Vehicle capabilities, such as stopping distances and passing abilities; and
(c) Highway settings, operating environments and adverse conditions, including but not limited to conditions affected by illumination, obstructions, or the weather, such as snow, ice, or rain.

Section 6. The certified agency may charge a reasonable fee for the course. The Transportation Cabinet may require an audit by an independent firm of the fees collected and expenditure of those fees.

Section 7. Upon written notice the Transportation Cabinet may rescind and cancel the certification of approval of any agency conducting the course prior to the two (2) year time period established by Section 4 of this regulation for good cause, including but not limited to any of the following reasons:
(1) Deletions or additions have been made to the curriculum which have not been specifically approved by the Transportation Cabinet;
(2) The person or any instructor has failed to comply with any of the provisions of this regulation.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 20, the new drunk driving law passed by the 1984 General Assembly, becomes effective July 13, 1984. Sections 4 and 7 of SB 20 allow the Transportation Cabinet to set standards for the course and curriculum of any driver improvement program or alcohol or substance abuse education or treatment program established pursuant to KRS 186.560. First time convictees of driving under the influence of intoxicants will have their driver license revocation period shortened from six months to 30 days by successfully completing an approved alcohol or substance abuse program. This new administrative regulation sets standards and criteria for such alcohol or substance abuse programs. It is necessary to adopt it on an emergency basis so that it becomes effective at the same time SB 20 does. An ordinary reguation to replace this emergency regulation will be promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Cabinet for Human Resources

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:050E. Alcohol Education or Treatment Program.

RELATES TO: KRS 186.560, and Senate Bill 20, Sections 4 and 7 of the 1984 General Assembly
PURSUANT TO: KRS 186.400, 186.560
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: Senate Bill 20 allows a person convicted the first time of driving under the influcence of alcohol or any substance which may impair their driving ability (DUI) to have the driver license revocation period shortened from six (6) months to thirty (30) days by successfully completing an alcohol or substance abuse program. KRS 189A.040 and 189A.070 allow the Transportation Cabinet to set standards for the course and curriculum of the driver improvement program or alcohol and substance abuse education or treatment program pursuant to KRS 186.560. This regulation is necessary to establish standards and criteria for such alcohol or substance abuse programs.

Section 1. Definition. "Education or treatment program" means a course, approved pursuant to KRS 186.560 and 189A.070 by the Transportation Cabinet that shall be open to any licensed driver of this state who has been convicted of a first offense of DUI.

Section 2. No person shall offer, conduct or engage in the business of offering or conducting an alcohol or substance abuse program pursuant to KRS 186.560 and 189A.070 without obtaining the prior approval of the Transportation Cabinet pursuant to the provisions of this administrataive regulation. A person shall file an application for approval of a course with the Transportation Cabinet; and the application shall be on the form furnished by the Transportation Cabinet and shall contain the information required by the Transportation Cabinet. Said application forms can be obtained from the Transportation Cabinet, Division of Driver Licensing, State Office Building, 2nd Floor, Frankfort, Kentucky 40622.

Section 3. The completed application shall be accompanied by the following:
(1) A copy of the proposed course materials, curriculum, and promotional documents;
(2) The name, address, and social security number of the instructors who shall conduct the course; and
(3) A copy of the manual and course materials for the instructor's preparation course.

Section 4. In the event the course application is approved, the course approval shall be valid until cancelled. Any person who has obtained approval for a course shall comply with the following requirements:
(1) Apply to the Transportation Cabinet for approval if there are any proposed additions or deletions to a previously approved course or its curriculum;
(2) Perform all necessary administrative functions in connection with the course;
(3) Obtain approval from the Transportation Cabinet of the form of the certificate to be issued upon course completion as specified in subsection (4) of this section;
(4) Provide each participant, satisfactorily completing the course, with an approved certificate of course completion;
(5) Maintain records which indicate the name, address, and social security number and the date of the course and if the course was satisfactorily completed for those individuals who have attended the course within the previous five (5) years;
(6) Provide and train instructors to conduct courses;
(7) Conduct the course in accordance with the description and curriculum approved by the Transportation Cabinet;
(8) Provide the Transportation Cabinet with a schedule of class dates, times, and locations; and
(9) Authorize and permit the Transportation Cabinet to audit the records of the approved course and to monitor and evaluate any and all portions of the course including but not limited to the classroom facility, the use of the instructional materials, and the actual presentation of the course, and qualification of instructors.

Section 5. No course shall be approved unless the course shall have a minimum of nine (9) hours of classroom instruction; and the curriculum of the course shall at least include but shall not be limited to the following subject matters:

(1) The alcohol offender in the Commonwealth of Kentucky;

(2) Recognizing the alcohol or substance abuse problem;

(3) Assuming the responsibility of dealing with the problem;

(4) Alternative approaches and support to resolving the problem;

(5) Personal strategy for sustaining commitment to the alcohol driver education program;

(6) Maximizing personal influence by working with potential offenders; and

(7) Determining risk factors created by a variety of psychological, social, and physical factors that can facilitate or inhibit the functions required in driving, including but not limited to:

(a) The effects and compensatory measures concerning the relationships between alcohol, drugs, or medication and driving performances;

(b) The negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performances.

Section 6. Upon written notice the Transportation Cabinet may rescind and cancel the certification of approval of any agency conducting the course for good cause, including but not limited to any of the following reasons:

(1) Deletions or additions have been made to the curriculum which have not been specifically approved by the Transportation Cabinet;

(2) The agency or any instructor has failed to comply with any of the provisions of this administrative regulation.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 enacted by the 1984 General Asembly becomes effective July 13, 1984. This law allows, under special conditions, that coal may be transported in vehicles exceeding 80,000 pounds gross weight, that vehicles primarily transporting coal may be specially registered and that the operation of such specially registered vehicles will be exempted from the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2) and (3). This new administrative regulation provides that all of the forms and applications necessary to be completed and filed be compiled in one manual for the ease of use by the coal operators or transporters. It is necessary that this regulation become effective at the same time as HB 25 so that the forms and applications will be readily available. An ordinary administrative regulation to replace this emergency regulation will be filed with the Administrative Regulations Compiler in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 35:010E. Forms applicable to coal transportation.

RELATES TO: House Bill 25
PURSUANT TO: KRS 42.455, 138.725, 174.080, 177. (House Bill 25, Sections 8 & 9), 186. (House Bill 25, Section 6), 350.060, 351.175
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: House Bill 25 requires the filing and maintenance of various forms and applications for its implementation. It further requires guidelines to be established for registration and weight distance and fuel surtax exemptions. In order to compile all of these forms in one (1) manual for easy access, the forms applicable to coal transportation is being published and maintained by the Transportation Cabinet.

Section 1. Manual. (1) The Transportation Cabinet shall publish and maintain a manual titled "Forms Applicable to Coal Transportation." Such manual shall contain the forms, instructions and requisite guidelines to implement KRS 186.057, 177.979, and 177.980. This manual is effective as of July 13, 1984, and incorporated by reference as part of this regulation.

(2) The forms included in the manual are:

(a) Application for increase in vehicle registered weight;

(b) Highway quarterly tax return;

(c) Kentucky unit mileage report;

(d) Monthly tonnage tax return;

(e) Application for motor fuel surtax and weight distance tax exemption;

(f) Extended weight tags, procedures for county clerks;

(g) Motor carriers payment advice;

(h) Application for transportation plan, cooperative agreement, and/or ton-tax license; and

(i) Certified transportation plan.

Section 2. Availability. This manual is adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission, and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622, and any district highway office.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 enacted by the 1984 General Assembly becomes effective July 13, 1984. This law provides, in part, that vehicles specially registered to transport coal in excess of 80,000 pounds gross weight will be permitted to enter into a cooperative agreement with the Transportation Cabinet, Department of Vehicle Regulation rather than pay a tax with the rate dependent upon the shipping distance of the coal. This new administrative regulation provides the limitations and requirements imposed on transporters of coal who wish to haul in vehicles exceeding 80,000 pounds gross weight and enter into these cooperative agreements. It is necessary that this regulation become effective at the same time as House Bill 25 so that the information can be timely disseminated to the public. An ordinary administrative regulation to replace this

emergency regulation will be filed with the Administrative Regulations Compiler in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 35:020E. Transportation plan, coal cooperative agreements.

RELATES TO: KRS 42.455(8), 177.972, 177.976, 177.979, 186.057, 350.060(11), 351.175(6),
PURSUANT TO: KRS 42.455(8), 174.080, 177.972, 177.976, 177.979, 186.057
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: KRS 351.175(6) and KRS 350.060(11) require that mine operators submit with their application for mining licenses a transportation plan certified by the Department of Vehicle Regulation. KRS 42.455(8) and KRS 177.972 designate the Transportation Cabinet as the agency responsible to the identification of public highways, roads, streets, and bridges that comprise the official coal haul highway system. KRS 177.976 allows for the operation of vehicles transporting coal in excess of the weights precribed in KRS 189.222 and allows the Commissioner of Vehicle Regulation to restrict or regulate traffic on the coal transportation system in such a manner as is reasonably necessary to promote the safety and convenience of the traveling public. This regulation is adopted to provide for and regulate such hauling, to provide for the gathering of pertinent information from all coal shippers or owners regarding the movement of coal, and to specify the procedures to be used to obtain a certified transportation plan.

Section 1. Application for Transportation Plan. Every person subject to KRS 351.175, 350.060, 42.455 and 177.972 shall apply to the Department of Vehicle Regulation for a certified transportation route and gross weights for each vehicle type whereby the applicant proposes to transport materials. Applications may be obtained from any highway district office or the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622.

Section 2. Form of Application. The application form prescribed by the Department of Vehicle Regulation shall require such information as is necessary to determine the adequacy of the roads, streets, and bridges to carry out weights requested by the applicant an to adequately identify the applicant. The application must be accompanied by a map designating the desired route. Copies of maps may be obtained from the Division of Planning or from the district highway office of the district in which the roads, streets and bridges are located. The specified form is contained in the manual titled, "Forms Applicable to Coal Transportation," adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622 and from any district highway office.

Section 3. Filing of the Application. The original and three copies of the application for a certified transportation plan shall be submitted to the Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622. Said transportation plan, upon receipt by the Department of Vehicle Regulation, shall be forwarded to the Department of Highways for the evaluation of all roads, streets and bridges on the proposed route at the requested weights. A separate application must be filed for each origin and destination between which materials are to be transported.

Section 4. Evaluation of Transportation Plan. (1) The State Highway Engineer shall cause each road, street and bridge listed on the application to be evaluated to determine if the requested weights can be allowed without being unreasonably detrimental to the safety and convenience of the traveling public. Such evaluation may include, but not be limited to, the following:
(a) The design and construction of the roads and bridges.
(b) The current condition of the roads and bridges.
(c) The structural adequacy of the roads and bridges.
(d) The types, numbers, and configurations of the vehicles to be used for the hauling of the coal.
(e) Proposed improvements to be made to the roads or bridges pursuant to a cooperative agreement.
(f) The rate of deterioration and the estimated amount of damage to be sustained by the roads or bridges considering the level of maintenance to be accomplished pursuant to a cooperative agreement and/or normal routine maintenance.
(g) The effect of any approved maintenance, construction, or reconstruction of the roads or bridges to be provided by the state or persons other than the state under a cooperative agreement.
(h) Historical data of the roads and bridges.
(2) After evaluation, the State Highway Engineer shall submit to the Commissioner of Vehicle Regulation in writing his analysis of the proposed transportation plan and his recommendations. The analysis shall be accompanied by reasons setting forth the basis of the evaluation by the State Highway Engineer.

Section 5. Notification to Applicant. Upon receipt of the evaulation from the State Highway Engineer, the Department of Vehicle Regulation shall notify the applicant of the determination of the Department of Vehicle Regulation. If the plan is certified, one (1) original and two (2) copies will be returned to the applicant. If the plan is not certified, the applicant shall be so notified with the reasons as the basis of the rejection set forth. If the plan is certified conditioned upon modification, the applicant will be advised of the required modifications for certification and may make revised application and resubmit it in accordance with Section 3 of this regulation.

Section 6. Change in Transportation Plan. No transportation plan may be changed or rerouted without prior approval of the Department of Vehicle Regulation. Requests for changes shall be processed in the same manner as applications for new transportation plans.

Section 7. Transportation Plan to Serve as Application for Cooperative Agreement or Ton-Tax License. The application for a transportation plan may be considered as an application for a cooperative agreement or a ton-tax license if the applicant completes the applicable portions of the application. Cooperative agreements and ton-tax licenses are available only for the transportation of coal.

Section 8. Suspension of Transportation Plan Under Emergency Conditions. In the event the Commissioner of the Department of Vehicle Regultion determines a condition exists which constitutes an imminent danger to the safety and convenience of the traveling public, the commissioner may immediately suspend without notice the transportation plan of any person. Within fifteen (15) days after such suspension, the commissioner shall notice those affected. Any person whose certified transportation plan has been suspended may, within twenty (20) days after notice appeal such action. Upon receipt of a proper and timely appeal, the commissioner or a representative of the department designated by the commissioner may conduct a hearing.

Section 9. Suspension or Revocation of a Transportation Plan. Any person who holds a coal shipper's license or is a party to a cooperative agreement and fails to comply with the terms, conditions, or requirements of such license or cooperative agreement may have served on him by the Commissioner of the Department of Vehicle Regulation notice to said person of his failure to comply. Said notice shall set forth the reasons for any deficiencies and state the time in which such deficiencies shall be remedied. Failure to comply with the directions given in the notice shall constitute just cause for immediate revocation or suspension of any applicable certified transportation plan. Any person whose plan has been suspended or revoked may within twenty (20) days after notice, appeal such action. Upon receipt of a proper and timely appeal the Commissioner of Vehicle Regulation or a represntative of the department designated by the commissioner shall conduct a hearing.

Section 10. Temporary Authority. The commissioner may, upon receipt of proper application, grant temporary certification of a transportation plan where it can be adequately demonstrated that, either the routes proposed to be used have been previously approved for weights equal to or in excess of those contained in the proposed transportation plan, or an emergency condition exists which requires the use of alternate routes other than those previously certified and which have been approved for weights equal to or in excess of those previously approved in his transportation plan.

Section 11. Limitations. No person shall knowingly load or cause to be loaded, or operate or cause to be operated, any vehicle subject to a transportation plan in excess of the limits specified in the certified transportation plan or in excess of the limits specified on any road, street, or bridge other than those listed on the certified transportation plan. No person shall operate or cause to be operated any vehicle in excess of the posted weight limit of any road or bridge unless specifically authorized by permit, agreement or license.

Section 12. Reporting Requirements. (1) On or before the 20th day of the month following the interval in which any coal is shipped over public highways, roads, bridges or streets by or on behalf of any holder of a certified transportation plan from a mine mouth or pit to a processing plan, tipple, loading dock, or customer, or from any of the foregoing locations to another of such locations, the holder of the certified transportation plan shall file a report on Form TD 59-100 (Coal Severer and/or Route and Tonnage Report) or other form designated by the cabinet. This report is to be filed with the Kentucky Department of Highways, Division of Planning, and contain information required by the Transportation Cabinet relative to the ton miles of coal transported on the public highways, streets, roads and bridges of each county, in or through which coal was transported. Unless otherwise specified, the reporting interval shall be a calendar year quarter. These forms will be provided by the Transportation Cabinet to each holder of a certified transportation plan on or before the last day of each reporting interval. A copy of the information furnished to the Natural Resources and Environmental Protection Cabinet pursuant to the permitting requirements of KRS Chapter 350 regarding public road transportation plan may, subject to its approval, be submitted to the Transportation Cabinet to satisfy the reporting requirements of this section. The holder of a certified transportation plan is responsible for obtaining and reporting the origin, the destination, the tons and approximate highway mileage on each route or road for all coal transported pursuant to said plan on public highways or streets when the coal is sold by a person or organization, such as a broker, or when the coal is transported by another individual or firm engaged in trucking coal for hire.

(2) A holder of a certified transportation plan who is not engaged in the transportation of coal in any way must notify the Department of Highways of the precise nature of his operations in order that his address may be removed either temporarily or permanently from the mailing list of those firms to which forms are periodically sent. Likewise, a holder of a certified transportation plan who ships no coal during an interval shall inform the department of that fact on or before the due date for that interval's report.

Section 13. Annual Updating Required. Certified transportation plans will remain valid unless suspended, revoked, or changed in accordance with this regulation. If there have been no changes, the holder of the certified transportation plan shall annually notify the Department of Vehicle Regulation to that effect.

Section 14. Extended Weights. If a certified transportation plan allows for the transporting of coal on state maintained roads, streets, and bridges in vehicles whose gross weights or axle weights exceed the limits designated by the Secretary of Transportation pursuant to KRS 189.222 all vehicles used for the transportation of the coal must be registered for extended weights. In addition, any person as defined in Section 1 of this regulation and transporting coal in vehicles registered as provided for in KRS 186.057 must also obtain a coal shipper's license in accordance with 601 KAR 9:074.

Section 15. Coal Cooperative Agreements. The provisions of cooperative agreements may be negotiated in conjunction with the Department of Highways concurrently with the evaluation of the transportation plan required by Section 4 of this regulation. Upon receipt of a proposed agreement certified by the State Highway Engineer and recommended by the Commissioner of Highways, the Commissioner of Vehicle Regulation may enter into the cooperative agreement with the applicant.

Section 16. Equitable Apportionment. The equitable apportionment of the incremental costs assigned to a person shall be based upon, but not limited to the following factors:

(1) The cost of surface design, maintenance, construction and reconstruction.

(2) The cost of shoulder design, maintenance, construction and reconstruction.

(3) The cost of bridge design, maintenance, construction and reconstruction.
(4) The tonnage shipped.
(5) The type of vehicles used.
(6) The number of vehicles used.
(7) Other pertinent factors related to the transportation of coal at extended weights.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 enacted by the 1984 General Assembly becomes effective July 13, 1984. This law provides, in part, that vehicles specially registered to transport coal in excess of 80,000 pounds gross weight will be permitted to pay a tax with the rate dependent upon the shipping distance of the coal rather than enter into a cooperative agreement with the Transportation Cabinet, Department of Vehicle Regulation. This new administrative regulation provides the limitations and requirements imposed on transporters of coal who wish to haul in vehicles exceeding 80,000 pounds gross weight and pay this "ton tax". It is necessary that this regulation beocme effective at the same time as House Bill 25 so that the information can be timely disseminated to the public. An ordinary administrative regulation to replace this emergency regulation will be filed with the Administrative Regulations Compiler in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 35:040E. General ton tax provisions.

RELATES TO: KRS 177 (House Bill 25, Sections 8 and 9)
PURSUANT TO: KRS 177 (House Bill 25, Section 9)
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: Under Section 9 of House Bill 25, a provision is made for payment of a tax with the rate depending upon the shipping distance of the coal. Under this section, no cooperative agreement is necessary. The operator, processor, shipper, etc., must have a valid, certified transportation plan in effect prior to his shipping any coal at extended weights. This administrative regulation is needed in order to implement the ton tax provisions of House Bill 25.

Section 1. Definitions. For the purpose of this regulation, the following definitions shall apply:
(1) A "motor carrier" is defined as a motor vehicle.
(2) "Extended weights" means weights in excess of the weights authorized by the Secretary of Transportation pursuant to KRS 189.222 on the state maintained highway system and pursuant to KRS 189.221.
(3) The "point at which coal is mined" means the point at which a motor vehicle transporting coal pursuant to a certified transportation plan first enters the public highway system.

Section 2. Shipping Requirements. Upon receipt of a certified transportation plan as defined in 601 KAR 35:020 and a valid ton tax license number, the operator, processor, or shipper may begin shipping coal at extended weights in vehicles registered pursuant to KRS 186.057.

Section 3. Proper Registration/Condition Precedent. All motor vehicles transporting coal at extended weights must be properly registered under KRS 186.057 for such weights. No vehicle shall carry weight in excess of its properly licensed weight.

Section 4. Limitations. All motor vehicles registered under KRS 186.057 and transporting coal at extended weights pursuant to a ton tax license shall be limited to a radius of seventy-five (75) air miles from the point at which the coal is mined.

Section 5. Payment of Administrative Costs. All funds necessary for the assessment and collection of the ton tax may accrue to and be paid out of the restricted fund established in KRS 177.978.

Section 6. Notice of Transportation Plan to Motor Vehicle Operators. All mine operators, processors, and shippers shall provide a copy of their certified transportation plan issued pursuant to 601 KAR 35:020 to all vehicles transporting coal at extended weights on their behalf.

Section 7. Vehicles registered pursuant to KRS 186.057 must obtain a certified transportation plan. Such vehicles shall not be subject to either ton tax provisions or a cooperative agreement.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

House Bill 25 enacted by the 1984 General Assembly becomes effective July 13, 1984. This law provides that vehicles primarily transporting coal may be specially registered in order to transport coal in vehicles exceeding 80,000 pounds gross weight. It is necessary that this regulation become effective at the same time House Bill 25 so that the registration of the vehicles can begin immediately. An ordinary administrative regulation to replace this emergency regulation will be filed with the Administrative Regulations Compiler in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 35:050. Registration for extended weights.

RELATES TO: KRS 186 (House Bill 25, Section 6)
PURSUANT TO: KRS 186 (House Bill 25, Sections 6 and 11)
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: Pursuant to KRS 186 the Department of Vehicle Regulation is vested with the responsibility of registering vehicles which may, primarily, transport coal at weights in excess of 80,000 pounds. This

registration is subject to all laws and regulations now in effect. This administrative regulation is necessary to provide the procedures for such vehicle registration.

Section 1. Definitions. For the purpose of this regulation, the following definitions shall apply: (1) Primarily transporting coal—Ninety (90) percent of each vehicle's mileage must be either generated when the vehicle is empty or made in shipment of coal, and for each shipment to qualify the commodity must be 100 percent coal, coal refuse, or coal by-products related to the mining operation.

(2) Motor carrier—A motor carrier is defined as a motor vehicle.

(3) Extended weight license identification—Registration issued pursuant to KRS 186.057 permitting the licensing of vehicles to be operated at a gross weight greater than 80,000 pounds.

(4) Extended weights—Weights in excess of the weights authorized by the Secretary of Transportation pursuant to KRS 189.222 on the state-maintained highway system and pursuant to KRS 189.221.

(5) Apportioned registration—As defined in 601 KAR 9:045.

Section 2. Extended Weight License. All persons intending to primarily transport coal at extended weights shall apply for an extended weight license. The applicant shall use the vehicle transaction record and follow the guidelines as contained in the manual, Forms Applicable to Coal Transportation, adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622 and any district highway office. The applicant shall refer to the registration type as an "Extended Weight/Coal."

Section 3. Registration Decal. All persons, except apportioned registrants, registering pursuant to KRS 186.057 shall be issued a decal to be affixed to the left inside of the front windshield. Such decal shall bear the identical number as that on the registrant's license plate.

Section 4. Apportioned Registration. Any apportioned registrant who is validly registered under the forms applicable to coal transportation agreement, primarily transports coal, and has paid a fee for the extended weight license may receive a decal to be affixed to the left inside of the front windshield, indicating said registrant is validly registered under KRS 186.057. The Division of Motor Vehicle Licensing shall formally acknowledge receipt of the fee as so provided.

Section 5. Requirement for a Certified Transportation Plan. No registration issued pursuant to KRS 186.057 shall be considered a license to transport coal at extended weights absent a certified transportation plan. A copy of the certified transportation plan issued pursuant to 601 KAR 35:020 must be carried in the vehicle at all times when the vehicle is transporting coal at extended weights. Vehicles registered pursuant to KRS 186.057 must obtain a certified transportation plan. Such vehicles shall not be subject to either ton-tax provisions or a cooperative agreement.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

KRS Chapter 183 allows the Transportation Cabinet to expend development funds on public airports. KRS Chapter 13A requires that the procedures and policies of such a program be promulgated as an administrative regulation. Since a new fiscal year has begun and new funds are available for the airport development program, it is necessary to adopt this emergency regulation in order for the Transportation Cabinet to have the authority to operate the program. This emergency regulation will be replaced by an ordinary administrative regulation promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Office of Aeronautics

602 KAR 15:020E. State aid for airport development projects.

RELATES TO: KRS 183.120, 183.505, 183.764
PURSUANT TO: KRS 183.024, 183.505
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: This administrative regulation defines the procedure that must be followed in order to obtain financial aid from the Transportation Cabinet, Office of Aeronautics for an airport development project (as defined in KRS 183.011(14)) for a public airport owned by another state agency, an airport board appointed pursuant to KRS 183.132 or a city and/or county government.

Section 1. To be eligible for financial aid from the airport development fund under this administrative regulation for the airport must meet the following criteria:

(1) The airport must be publicly-owned;

(2) The airport must be available for public use;

(3) The proposed development project must be consistent with the airport type and degree of facility development contained in the state airport system plan;

(4) The proposed development project must either be in accordance with the airport's approved master plan or to prepare or update the airport's master plan; and

(5) The airport must be in compliance with the minimum safety standards set forth in 602 KAR 20:010 to 602 KAR 20:110 or the proposed development project must bring the airport in compliance with those standards.

Section 2. (1) An airport owner may apply for state aid for airport development projects. Airport development is defined in KRS 183.011(14) and is used in the same context in this regulation except that it shall include airport maintenance and such maintenance shall be limited to pavement seal coats and overlays, joint repair, obstruction removal or approach clearing and drainage repair.

(2) To apply for state airport development funds, the airport owner must submit a "Request for State Funds for Airport Development," form TC 56-15A, to the Transportation Cabinet, Office of Aeronautics, State Office Building, Frankfort, Kentucky 40622, referred to as Office of Aeronautics. The application form must be completed and must contain the project description, the reason for the project, the estimated cost of the project, and the an-

ticipated funding sources. This form is available from the Office of Aeronautics.

Section 3. If a project application is approved for funding by the Office of Aeronautics, a "Tentative Allocation," form TC 56-15B, will be issued to the airport owner. The "Tentative Allocation" will show the amount of state funds reserved for the project, the scope or the approved project and the time frame for which it is being considered. The Office of Aeronautics reserves the right to limit the scope of a project and cost estimates as necessary to conform to available funds.

Section 4. (1) If not already prepared, the airport owner is responsible for the preparation of the engineer's report which explains the design criteria, design plans, and specifications, subsequent to the issuance of the "Tentative Allocation." The design plans and specifications must be approved by the Office of Aeronautics and where appropriate, shall incorporate but not be limited to the following:

(a) "Standard Specifications for Road and Bridge Construction" published in 1983 by the Transportation Cabinet, Department of Highways;

(b) Federal Aviation Regulations Part 139; and

(c) Federal Aviation Administration Advisory Circulars in the 150 series.

Copies are available for viewing in the Office of Aeronautics.

(2) After the design plans and specifications have been approved, in order to establish reimbursable costs, the airport owner shall adhere to the applicable procedurement standards outlined in KRS Chapters 45, 45A and 56.

Section 5. After the reimbursable costs have been established for the project, the airport board may submit a "Project Application," form TC 56-15C, to the Office of Aeronautics. This application form must be completed and must contain the revised scope of project, the elements of cost, the source of funds, and an assurance that the airport board will not discriminate against any person or class of persons by reason of race, color, creed or national origin in the operation of the airport. The "Project Application" forms are available from the Office of Aeronautics.

Section 6. (1) After the Office of Aeronautics approves the submitted project or a portion thereof, a "State Grant for Airport Development," form TC 56-15D, will be issued to the airport owner. The grant form will show the scope of the project as finally approved and the amount of state funds obligated to the project. If the airport owner agrees to the terms of the state grant, it may accept the grant form and must return an executed copy to the Office of Aeronautics.

(2) The execution of the grant form is the airport owner's authorization from the Office of Aeronautics to have the contractor proceed. Unless otherwise agreed to, no construction costs incurred prior to the execution of the grant agreement are eligible for state participation. A copy of the notice to proceed to the contractor must be furnished to the Office of Aeronautics.

(3) Land acquisition, administrative, legal and engineering costs incurred prior to the execution of the grant form may be eligible for state participation at the discretion of the Office of Aeronautics.

Section 7. (1) To receive the state's share of the project costs the airport board must submit to the Office of Aeronautics copies of the bills from the contractors, suppliers, engineers, attorneys, and others involved in the project and attach said copies to a completed "Standard Invoice," form TC 31-519. Copies of this form are available from the Office of Aeronautics.

(2) Final payment from the Office of Aeronautics will not be sent to the airport board until after audit of the project cost performed in accordance with the standards set forth in Attachment P, OMB Circular A 102, dated October 22, 1979. Copies of the standards are available for viewing in the Office of Aeronautics.

Section 8. If the final project costs exceed the total amount agreed to in the "State Grant for Airport Development," the Office of Aeronautics shall incur no obligation to bear any portion of the increased project cost.

Section 9. By acceptance of such airport development grant funds, the airport owner agrees to make the airport on which the funds were expended available for public use for a minimum period of twenty (20) years. Failure to comply with this requirement shall be just cause for the Office of Aeronautics to seek refunding or returning of all funds furnished in the last twenty (20) years for all of the airport development projects associated with the subject airport.

ROBERT COX, Executive Director
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 13, 1984
FILED BY LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 67 passed by the 1984 General Assembly which was revised KRS 189.221 becomes effective July 13, 1984. A portion of this law allows vehicles hauling building material to operate without a permit up to 80,000 pounds on the county maintained system en route to a road construction project. To ensure that there is no confusion between the county maintained system and the state maintained system of highways, it is necessary that the administrative regulation become effective at the same time Senate Bill 67 does. This emergency regulation will be replaced by an ordinary administrative regulation promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways

603 KAR 5:130E. Hauling building materials to a road construction project.

RELATES TO: KRS 189.221
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: This regulation is needed in order to specify on which highways in the Commonwealth 80,000 pounds may be hauled when the load is building materials for a road construction project. The Secretary of Transportation, under the authority of KRS 189.222, has increased the maximum gross weight of the entire state maintained system to a minimum of 44,000 pounds. Therefore, Senate Bill 67, Section 6, does not apply to the state maintained system.

Section 1. Trucks hauling building material to a road construction project may haul up to 80,000 pounds on the county road system in accordance with Senate Bill 67.

Section 2. Building material being hauled to a road construction project over the state maintained system cannot exceed the legal axle and gross weights outlined in KRS 189.222 and in 603 KAR 5:095.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the authority to operate. Therefore, in order to continue to operate the Transportation Cabinet in accordance with KRS Chapter 96A, the Transportation Cabinet needs to implement these emergency regulations. This program passes federal funds to local agencies to provide transportation services in rural areas. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:020E. Non-Urbanized public transportation program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: The non-urbanized public transportation program is authorized and governed by Section 18 of the Urban Mass Transportation Act of 1964, as amended; 49 USC 1601 et seq. and 49 CFR 825. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the non-urbanized public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the non-urbanized public transportation program as authorized by Section 18 of the Urban Mass Transportation Act and KRS Chapter 96A, the following are adopted by reference: (1) The Section 18 Application Guidelines issued March, 1982 and last revised June, 1984, by the Transportation Cabinet.

(2) The Section 18 Continuing Application Guidelines issued May, 1982 and last revised June, 1984, by the Transportation Cabinet.

(3) The State Management Plan for the Section 18 Program issued April, 1981 and last revised May, 1984, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the authority to operate. Therefore, in order to continue to operate the Transportation Cabinet in accordance with KRS Chapter 96A, the Transportation Cabinet needs to implement these emergency regulations. This program passes federal funds to local agencies to provide transportation to the elderly and handicapped. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:030E. Elderly and handicapped public transportation program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: The elderly and handicapped public transportation program is authorized and governed by Section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended; Public Law 88-365, as amended; 49 USC 1601 et seq. and 49 CFR 601.2. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the elderly and handicapped public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the elderly and handicapped public transportation program as authorized by Section 16(b)(2) of the Urban Mass Transportation Act and KRS Chapter 96A, the following is adopted by reference: The Section 16(b)(2) Application Guidelines issued August, 1978 and last revised June, 1984, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of

Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the authority to operate. Therefore, in order to continue to operate the Transportation Cabinet in accordance with KRS Chapter 96A, the Transportation Cabinet needs to implement these emergency regulations. This program provides funds for capital improvements of mass transit services. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:040E. Public transportation capital assistance program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: The Public Transportation Capital Improvement Program is authorized and governed by the budget bill adopted by the Kentucky General Assembly. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the nonurbanized public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the public transportation capital assistance program as authorized by the General Assembly and KRS 96A, the following is adopted by reference: The Public Transportation Capital Improvement Program issued May, 1982 and last revised August, 1983, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the authority to operate. Therefore, in order to continue to implement Title 49, Section 1654 of the U.S. Code, the Transportation Cabinet needs to implement these emergency regulations. This program passes federal funds directly to local rail lines for restoration and revitalization. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:050E. Local rail service assistance program.

RELATES TO: Kentucky Acts 1982, Chapter 184, Section 8 and Senate Bill 238 passed by the 1984 Kentucky General Assembly
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: Title VIII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and as amended by Title I of the Local Rail Service Assistance Act of 1978, and 49 USC 1654 authorizes the states to implement a local rail service assistance program. The function of this regulation is to implement the procedures required to administer the local rail service assistance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the local rail service assistance program as authorized by Title VIII of the 4R Act, the following is adopted by reference: (1) Title 49, Part 266, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the authority to operate. Therefore, in order to continue to implement Title 23, Sections 104, 134, and 307, U.S. Code, the Transportation Cabinet needs to implement these emergency regulations. This program passes federal funds directly to Metropolitan Planning Organizations to provide comprehensive transportation planning in their area. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect

to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:060E. Urbanized area transportation planning.

RELATES TO: KRS 176.050, 176.240
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: Title 23 USC Section 134, 49 CFR Part 613, 23 CFR Part 450, the 1972 Federal-Aid Highways Act, and the 1978 Surface Transportation Assistance Act require that each urbanized area, as a condition of receive of federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized areas. These plans and programs support transportation improvements and subsequent project development activities in the area. The function of the regulation is to implement the procedures required to administer the program in accordance with applicable state and federal law and regulations.

Section 1. In order to facilitate the administration of this program the following are adopted by reference:
(1) Title 49, Part 613, U.S. Code of Federal Regulations.
(2) Title 23, Part 450, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement these regulations or not have the autority to operate. Therefore, in order to continue to implement Title 23, Section 146A, U.S. Code, the Transportation Cabinet needs to implement these emergency regulations. This federally funded program provides grants to local agencies to provide ride-sharing services. Ordinary administrative regulations cannot suffice since no administrative regulations have been filed with respect to these subject matters previously. Without emergency regulations no approved operating procedure will exist and no funds can be distributed. These emergency regulations will be replaced by ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
FLOYD G. POORE, Secretary
Transportation Cabinet

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:070E. Carpool project.

RELATES TO: KRS 176.050, 176.240
PURSUANT TO: KRS 174.080
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: The 1978 Surface Transportation Assistance Act, Section 126 and 23 USC 146A authorized the formation and funding of ridesharing agencies in urban and urbanized areas. The function of this regulation is to implement the procedures required to administer this program in accordance with the applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of this program the following is adopted by reference: Title 23, Part 656, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to act. This regulation is necessary for the Alcoholic Beverage Control Board to act in the license issuing process for retail drink liquor licenses in the city of Pikeville, Kentucky. An ordinary regulation will not suffice because of an inordinate delay created thereby in the issuance of retail drink licenses by the General Assembly. This emergency regulation will be replaced by an ordinary administrative regulation which is being filed with the Legislative Research Commission concurrently with the emergency regulation in accordance with House Bill No. 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
EDWARD A. FARRIS, Commissioner-Chairman
Cabinet for Human Resources

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 9:050E. Retail drink liquor license quota.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030
PURSUANT TO: KRS 241.060
EFFECTIVE: July 11, 1984
NECESSITY AND FUNCTION: The express provi-

sions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.

Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by regulation retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivision. In such instances, the quota set in 804 KAR 9:010, Section 1(1) and (2), shall be inapplicable. The quota exceptions contained in 804 KAR 9:010, Section 2(1), (2), (3), and (4), shall remain in effect and be incorporated herein.

Section 2. Pursuant to the authority herein, the City of Pikeville, having been elevated to third class status by the 1984 session of the Kentucky General Assembly, the actual resident population of the City of Pikeville being at least 8,000 by virtue of its reclassification to a city of the third class and the resident population of Pike County being 86,307 according to the population projections of the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Kentucky, it is determined that the retail drink liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail drink liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail drink liquor license quota for the City of Pikeville, Kentucky, is therefore set at eleven (11).

EDWARD A. FARRIS
Commissioner-Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 11, 1984 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334. This emergency regulation is necessary due to the requirement of KRS 198B.560 which prohibits any person from engaging in the business of fire protection suppression system installations unless he shall be duly certified or licensed by regulation of the Department of Housing, Buildings and Construction. Thus, time is of the essence if the mechanisms for being so licensed or certified are to be established upon the effective date of the statute, July 13, 1984.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
CHARLES A. COTTON, Commissioner
Department of Housing, Buildings and Construction

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Building Codes Enforcement

815 KAR 7:080E. Licensing of fire protection sprinkler contractors.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.555
EFFECTIVE: July 13, 1984
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required to adopt regulations for the administration of a Fire Protection Sprinkler Contractor's Law. This regulation establishes the qualifications, responsibilities, procedures and fees for licensing such contractors.

Section 1. Responsibilities of the Commissioner. The commissioner shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this regulation. He shall conduct investigations upon complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or this regulation.

Section 2. Applicability. (1) This regulation applies to all firms and persons who engage in he business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of any fire protection sprinkler system.

(2) Exceptions: This regulation shall not apply to:

(a) Professional engineers in the preparation of plans or construction inspections pursuant to KRS Chapter 322;

(b) Building officials, fire marshals or fire inspectors and insurance inspectors;

(c) Persons installing limited area sprinkler systems served by a domestic water supply consisting of ten (10) sprinkler heads or less in one (1) structure;

(d) Persons working under the direct supervision of a certificate holder.

(e) Persons performing routine examination of existing suppression systems for purposes of determining if the system is operational.

Section 3. Definitions. (1) "Department" means the Department of Housing, Buildings and Construction.

(2) "Certificate of competency" is the certificate of registration issued by the department to an individual certificate holder who has passed the requirements of the department as set forth in Section 4 of this regulation which authorizes a fire protection sprinkler contractor to obtain a license to engage in business as defined in subsection (5) of this section.

(3) "Certificate holder" is an individual who has satisfactorily met and has received a certificate of compentency and who serves as employee, owner, partner, or officer of a fire protection sprinkler contractor and prepares technical drawings, performs or supervises the installation, repair, alteration, addition, maintenance or inspection of a fire protection sprinkler system.

(4) "Commissioner" means the Commissioner of the

Department of Housing, Buildings and Construction.

(5) "Fire protection sprinkler contractor" means a person or firm engaged in the business of preparing technical drawings, installation, repair, alteration, exterior maintenance or inspection of fire protection sprinkler systems and has in his employment a certificate holder.

(6) "Fire protection sprinkler system" is a system of piping for which technical drawings have been prepared by or preparation supervised by a certificate holder in accordance with fire protection engineering standards. The system is supplied from a reliable, constant and sufficient water, gas or chemical supply, such as a gravity tank, fire pump, reservoir or pressure tank, or connection by underground piping to a city, county, municipal water district, authorized water main or both. The sprinkler system is considered the fire protection sprinkler system for purposes of this Act, and is a network of specially sized or hydraulically designed piping installed overhead and underground in a building, structure, or area, and to which sprinklers are connected in systematic pattern. The system includes a controlling valve and a device for actuating an alarm when a system is in operation. The system is activated by heat from a fire and causes the discharge of water, gas or chemical over the fire area. Fire protection sprinkler systems shall include the following types: wet-pipe systems, dry-pipe system, standpipe systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, antifreeze systems and circulating closed loop systems, systems utilizing gases or chemicals, and any other fire suppression system previously approved by the state fire marshal or the chief building code official of the department.

(7) "Inspection" means a physical and visual examination of a sprinkler system or portion thereof to verify that it conforms with the Kentucky Building Code and the standards adopted thereunder. Such examinations of existing systems for purposes of determining whether a system is operating properly are not covered by this definition, although any certificate holder is deemed qualified to make these examinations.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.

Section 4. Application for Certificate of Competency. (1) All persons seeking to become certificate holders shall demonstrate their competency by passing the National Institute for Certification in Engineering Technologies entitled Fire Protection Engineering Technology Automatic Sprinkler Design Level III test, (or the equivalent thereof approved by the commissioner for the particular type of system for which the applicant wishes to be certified competent). For range hood suppression system competency, a manufacturer's certification shall be acceptable as an alternative to the foregoing test.

(2) In lieu of the test required by subsection (1) of this section, affidavits to the effect that the certificate applicant has prior to July 16, 1984, satisfactorily supervised the preparation of technical drawings and the installation of three (3) fire protection systems of twenty-five (25) or more heads and in accordance with applicable NFPA standards adopted by reference in the Kentucky Building Code shall be accepted by the commissioner as evidence of competency. The Affidavit of Supervision shall be in accordance with the form prepared by the department and must be submitted to the commissioner and contain the necessary description and location of each such system; including the written approval for the system from the authority having jurisdiction, unless the plans were submitted to this department. Plans for both chemical and water systems must be submitted for a certificate of competency in both. Application for chemical systems only must be accompanied by three (3) drawings of such systems. This alternative shall not be available for any application submitted after July 15, 1985.

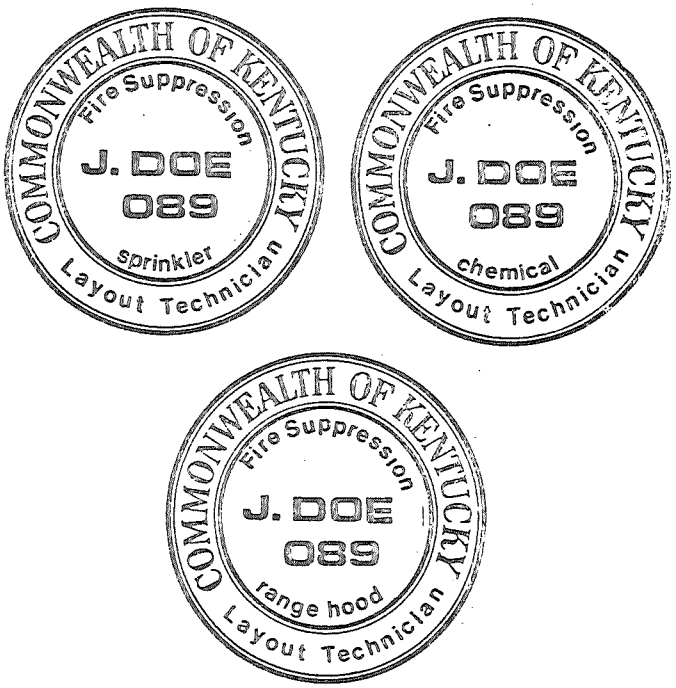
(3) Each application for a certificate of competency shall be made on the department's form entitled "Application for Certificate of Competency." The application shall be accompanied by all required documents and a nonrefundable certificate fee of $100, which shall be prorated.

Section 5. Application for Licensed Fire Protection Sprinkler Contractors. (1) Any applicant for licensure must have a certificate holder in his employ and must have, in effect, liability insurance in the premium amount of $250,000 per person and $500,000 per accident. For persons seeking to be licensed for the sole purpose of installing, repairing, maintaining and inspecting range hood fire suppression systems, the commissioner shall accept, as evidence of competency, the certification from the manufacturer of the range hood fire suppression system or from a professional engineer who has designed the system.

(2) The applicant shall complete and submit the required form together with a certificate of insurance in the amount of $250,000/$500,000 executed by a Kentucky licensed insurer and countersigned by a Kentucky licensed local agent. Such certificates shall remain in force until the insurer has terminated future liability by a thirty (30) day notice to the commissioner.

(3) The applicant shall submit a license fee in the amount of $200. The initial license fee shall be prorated.

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or under his direct supervision. The design shall be as follows:



Section 7. Certification/Licensure. (1) Upon completion of the requirements of Section 5 of this regulation, the certificate of competency shall be issued by the commissioner in the name of the certificate holder applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm as set forth on the application and state the name of certificate holder on the face of the license.

(3) Each license and certificate shall expire on June 30 of each year and shall be renewed by refiling the necessary application together with a fee of $100 for the certificate and $200 for the license, prior to June 30.

Section 8. Duties and Responsibilities of Licensed Contractor and Certificate Holder. (1) No person shall represent himself as a certified fire protection sprinkler contractor without first being licensed by the department in accordance with this regulation.

(2) No licensed fire protection sprinkler contractor shall design a fire protection sprinkler system for any building requiring the services of an architect or an engineer pursuant to KRS 323.033; however, shop drawings, including hydraulic calculations where required by the engineer may be prepared by the contractor to supplement the design.

(3) No person shall engage in any activity listed in Section 2 of this regulation unless he is supervised by or has in his employ a certificate holder.

(4) All material and information supplied by the contractor for a project requiring an engineer's seal shall be submitted to the professional engineer for the project who, in turn, shall submit them to the department and other necessary authority upon the engineer's written approval.

(5) The licensed fire protection sprinkler contractor may prepare and submit all plans and documents for the following buildings:

(a) Business, assembly, factory, mercantile and storage occupancies of less than 100 person capacity.

(b) Residential use groups of twelve (12) or less dwelling units or capacity of less than fifty (50).

Section 9. Disciplinary Action. (1) The department may refuse to renew or institute proceedings for the suspension or revocation of certificate holders and licensed contractors, or administrative fines in lieu thereof, not to exceed $500. The following shall constitute charges which are sufficient to initiate disciplinary action:

(a) False information or misrepresentation in obtaining such license or certificate.

(b) Failure to maintain required insurance.

(c) Failure to pay the renewal fee.

(c) Gross incompetency or gross negligence in the preparation of drawings, installation, repair, alteration, maintenance, inspection or addition to fire protection sprinkler systems, as determined by the commissioner.

(e) Conviction of a felony.

(f) Fraudulent or dishonest practices while engaging in the business of fire protection sprinkler systems.

(g) Signing or affixing his seal to any plans, prints, specifications or reports which have not been prepared by him personally or under his immediate supervision.

(h) Knowingly violating any provisions of KRS 198B.550 through 630 or this regulation.

(i) Violation of a Cease and Desist Order issued by the commissioner.

(2) The commissioner shall revoke the license of a licensed fire protection sprinkler contractor who engages in the fire protection sprinkler system business while the license is suspended.

(3) All suspensions and revocations are appealable to Franklin Circuit Court or the Circuit Court in which the property is located, if filed within thirty (30) days of notice of such revocation or suspension.

Section 10. Procedures for Administrative Disciplinary Hearings. (1) Upon written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this regulation, the commissioner shall cause an investigation to be made of the matter.

(2) If the commissioner determines that there is probable cause to believe the charges alleged, the commissioner or his designated representative, acting for the department, shall conduct a hearing as provided herein.

(3) In conducting the hearing, the commissioner or his designee shall have the authority to administer oaths and affirmatives, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule and hold conferences for the settlement or simplification of the issues by consent of the parties.

(4) Any order to suspend or revoke a license or certificate and any order firing a licensee or certificate holder shall be signed by the commissioner or approved by him. The commissioner shall issue an order within thirty (30) days of the completion of any hearing subject to this regulation.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 10:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 4:090E. Lead poisoning prevention.

RELATES TO: KRS 211.900, 211.905, 211.994
PURSUANT TO: KRS 194.050, 211.090, 211.901(5)
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: KRS 211.901(6) provides that local boards of health may by the adoption of local regulations establish programs for the prevention, screening, diagnosis and treatment of lead poisoning; provided that such regulations are the same as the provisions of KRS 211.900 to 211.905 and 211.994 and the regulations promulgated by the Secretary for Human Resources pursuant to subsection (5) of KRS 211.901. The function of this regulation is to set forth the criteria that must be included in local board of health regulations relating to the prevention, screening, diagnosis and treatment of lead poisoning.

Section 1. Definitions. As used in this regulation: (1) "Board" shall mean the board of health or any county, city-county or district including the Louisville and Jefferson County Board of Health and the Lexington-Fayette Urban-County Board of Health.

(2) "Department" shall mean the department of health of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(3) "Director" shall mean the chief administrative officer of any county, city-county or district health department including the Louisville and Jefferson County Health Department and the Lexington-Fayette Urban-County Health Department.

(4) "Cabinet" shall mean the Cabinet for Human Resources.

(5)"Secretary" shall mean the Secretary for Human Resources or his authorized representative.

(6) "Lead based substance" shall mean any substance containing more than six-hundredths (0.06) percent lead by weight of nonvolatile content as provided in KRS 217.801.

(7) "Dwelling" shall mean any structure, all or a part of which is designed for human habitation.

(8) "Dwelling unit" shall mean any room or group of rooms or other interior areas of a dwelling designed or used for human habitation.

(9) "Owner" shall mean any person who, alone, jointly, or severally with others, has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, agent of the owner, or as executor, administrator, trustee, conservator or guardian of the estate of the owner.

(10) "Occupant" shall mean any person living, sleeping, cooking, eating in or having actual possession of a dwelling unit or rooming unit.

(11) "Elevated blood lead level" shall mean a confirmed concentration of lead on whole blood of twenty-five (25) micrograms (ug) per deciliter (dl) or greater.

(12) "Surface" shall mean the outermost layer or superficial area of the materials of which a dwelling unit is constructed, excluding paint, plaster or putty of the interior or exterior of a dwelling unit, including but not limited to the outermost layer of superficial area of walls, ceilings, floors, stairs, windows, windowsills, window frames, window sashes, doors, door frames, baseboard and woodwork of a dwelling or dwelling unit.

(13) "Exposed surface" shall mean all interior surfaces of a dwelling or dwelling unit and those exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, such as stairs, decks, porches, railings, windows, doors and siding. All areas in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling lead based materials are also considered an exposed surface.

(14) "Chewable surface" shall include but not be limited to such surfaces as windowsills, window frames, door frames, handrails, toys, furniture, food utensils and other appurtenances offering a biting surface to a child or other person.

Section 2. Lead Based Paint Health Hazard. (1) Any lead based substance shall be considered a health hazard to children under six (6) years of age if:

(a) Said lead based substance exists in or about a dwelling, dwelling unit, household, school or day care facility in which children commonly reside or visit; and

(b) Said lead based substance is determined to be on any surface, exposed surface or chewable surface and contains more than six-hundredths (0.06) percent lead by weight of nonvolatile content or in excess of seven-tenths (0.7) milligrams per square centimeter of surface when tested by radioisotope x-ray fluorescent analyzer.

(2) Any lead based substance found to be a health hazard under subsection (1) of this section shall be corrected within the time period specified by the director in a written order. Failure to correct the health hazard within the specified time period shall result in the appropriate court action against the owner, operator or occupant for noncompliance unless an extension is granted by the director due to undue hardship.

(3) Correction procedures shall be approved by the director and shall include one (1) or more of the following:

(a) Stripping of the surface to the bare underlying materials which do not contain lead at the unsafe levels.

(b) The covering of such surfaces which contain lead at unacceptable levels with permanently affixed coverings, the surfaces of which are lead free and which with said permanently affixed coverings, are incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed in such manner as to expose the hazardous surface.

Section 3. Inspections. (1) If there is found the presence of flaking, peeling, chipping, or loose paint, plaster, or structural material in or around any building used for housing, specimens of the flaking, chipped or loose paint, plaster or structural material shall be collected to determine whether or not the materials contain lead. In lieu of taking samples, the surface may be tested with an "in situ" analyzer approved by the director.

(2) The chemical determination of the lead content in surface materials may be made by the quantitative measurements of samples of those materials.

(3) The physical determination of the lead content of surface material may be made by nondestructive measurements using radioisotope x-ray fluorescent analyzers (XRF) or other instruments approved by the director.

m(4) When a dangerous level of lead is found in a dwelling, the director may cause to have examined all children under six (6) years of age, and such other children as he may find advisable to examine, residing or who have recently resided in said dwelling. The results of such examinations shall be reported to the director, the affected individual and his parent or legal guardian.

Section 4. Hazard Abatement. (1) When the director determines that the presence of lead based substances in any dwelling or dwelling unit or premises creates a health hazard to children under six (6) years of age, he shall issue a written order to the owner, operator or occupant to eliminate the hazard within a time period not to exceed thirty (30) days; however, in the sound discretion of the director, additional time may be granted to remove, abate or remedy such condition due to undue hardship. Methods for compliance shall be in accordance with Section 2 of this regulation.

(2) Upon completion of the correction procedure, an inspection shall be made by the department to determine if the hazard has been satisfactorily eliminated.

(3) In the event the dwelling or dwelling unit or premises in which such are located is vacated by the occupant who occupied same at the time of the issuance of corrective order such dwelling, dwelling unit or premises shall not be let or occupied by any other person until such corrective order is complied with.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky

E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:110E. Onsite sewage disposal system installation permits.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: KRS 211.350 provides that no person, firm, or corporation shall construct, install, alter or cause to be constructed, installed, or altered any onsite sewage disposal system subject to regulation by the cabinet without having first obtained an onsite sewage disposal permit from the cabinet. The function of this regulation is to set forth the requirements for issuance of such permits.

Section 1. Citation of Regulation. This regulation may be cited as the "Onsite Sewage Disposal System Installation Permit Regulation."

Section 2. Issuance of Permits. (1) Except as otherwise provided by subsection (2) of this section, permits to construct, install or alter onsite sewage disposal systems shall be issued only to licensed plumbers.

(2) Permits to construct, install or alter onsite sewage disposal systems may be issued to homeowners who desire to install such systems for homes actually occupied by them or for a home to be constructed by them for their own personal residential use, provided:

(a) Application is made for the permit on forms provided by the cabinet prior to the beginning of the work; and

(b) All work is performed in compliance with the onsite sewage disposal systems laws and regulations; and

(c) All the work is personally performed by the owner.

Section 3. System Construction, Installation, or Alteration. (1) All work in the construction, installation, or alteration of an onsite sewage disposal system shall be performed by a licensed plumber, except those systems for which a homeowner has secured a permit to personally perform such work.

(2) Licensed plumbers or homeowners may contract with other persons for the performance of system excavation and backfilling work only. Such work by other persons shall be performed under the direct supervision of the permit holder for that system.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulations in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky

E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
PURSUANT TO: KRS [13.082,] 194.050
EFFECTIVE: July 6, 1984
NECESSITY AND FUNCTION: The Cabinet 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, 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 resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources is $1,500 for family size of one (1), $3,000 for family size of two (2), and fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, non-homestead real property, business or non-business, essential for self-support, is excluded from consideration.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which

may be in the form of pre-paid burial, trust fund or life insurance policies, are excluded from consideration. The face value of life insurance is considered when determining the total value of burial reserves *if the face value of the life insurance is less than $1,500.* Burial spaces are excluded from consideration when computing the value of burial reserves.

(6) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(7) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

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, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

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 this regulation, 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	*$2,300* [2,200]	*$192* [183]
2	*2,700* [2,600]	*225* [217]
3	*3.200* [3,100]	*267* [258]
4	*3,900* [3,800]	*325* [317]
5	*4,600* [4,400]	*383* [367]
6	*5,200* [5,000]	*433* [417]

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale.

Section 4. Additional Income Considerations. In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(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 (75) dollars 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 (40) dollars 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) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). 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) of this section.

(2) Income protected for basic maintenance is twenty-five (25) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of twenty-five (25) dollars is applied to the cost of care except as follows:

(a) Available income in excess of twenty-five (25) dollars 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 of this regulation.

(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.

(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 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred 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.

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 of this regulation. 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. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation and the six (6) months following that month.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and the next six (6) months thereafter; however, if ineligibility results, 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/*she* were a single individual due to living apart from his/*her* spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his/*her* spouse, one-half (1/2) 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) living with his/*her* 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 parents' 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/*her* income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five (25) dollars maintenance standard is not applicable since his/*her* 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.

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 parent (but not the other members of* the assistance group*)* subject to the following exclusions/disregards:

(1) The first seventy-five (75) dollars of the gross earned income of the stepparent who is employed full time or the first forty (40) dollars 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) of this regulation).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation 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/*herself* on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(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 considered available in the month of receipt or the first administratively feasible month thereafter.

Section 14. Full-Month Ineligibility Due to First-Day of Month Excess Resources. When an individual or family group related to the SSI assistance categories (i.e., aged, blind, or disabled) has excess resources on the first day of the month, the individual or group is ineligible throughout the month. The case shall be discontinued effective with the first administratively feasible month.

Section 15. 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 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 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.

(5) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss.

(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.

Section 16. Special Provisions for AIS/MR Recipients. Effective April 1, 1983, medical assistance eligibilty for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) The income and resources of the parent(s) and/or spouse shall not be considered available to the AIS/MR participant.

(2) Income protected for basic maintenance of the AIS/MR participant shall be the standard for the federal supplemental security income program.

(3) The attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar.

(4) Determinations of eligibility for medical assistance of the AIS/MR participant's parent(s), spouse, and/or dependent children shall be made on the same basis as if the participant was institutionalized.

Section 17. Implementation. The provisions of this regulation, as amended, will be effective on *July 1,* [February 1,] 1984, applicable at the time of the next *determination of eligibility* [reinvestigation] for each *applicant or* recipient.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary
APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 6, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS [13.082,] 194.050
EFFECTIVE: July 6, 1984
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 skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR *447.280* [447.272]. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Payment System, revised *July 1* [April 1], 1984, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of *May 16* [April 30] of each year and trending the facility costs to July 1 of the rate year. (Unaudited, *partial year,* and/or budgeted cost data may be used if a full year's audited data is unavailable. *Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.*) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 105 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 105 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 105 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease

in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. *A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.*

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess *twenty (20)* [five (5)] percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for *capital* [property] costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise

allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Division for Medical Assistance shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a wiaver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of [training,] conventions, meetings, assemblies, conferences, [seminars,] or any related activities), and legal fees for unsuccessful lawsuits against the cabinet. *However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.*

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the cabinet) as the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the cabinet will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(16) The cabinet may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence). [The cabinet may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.]

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and

trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$26.99 & below**	—	—
27.00 - 27.99	*$1.38*	*$.87*
28.00 - 28.99	*$1.29*	*$.75*
29.00 - 29.99	*$1.18*	*$.62*
30.00 - 30.99	*$1.06*	*$.47*
31.00 - 31.99	*$ .92*	*$.31*
32.00 - 32.99	*$ .76*	*$.13*
33.00 - 35.05	*$ .53*	—

Maximum Payment $35.05

[(Effective 7-1-83)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$25.99 & below*	—	—
26.00 - 26.99	$1.38	$.87
27.00 - 27.99	$1.29	$.75
28.00 - 28.99	$1.18	$.62
29.00 - 29.99	$1.06	$.47
30.00 - 30.99	$ .92	$.31
31.00 - 31.99	$ .76	$.13
32.00 - 33.17	$ .53	—]

[Maximum Payment $33.17]

*For a basic per diem of *$26.99* [$25.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$56.99 & below**	—	—
57.00 - 62.99	*$1.38*	*$.87*
63.00 - 68.99	*$1.29*	*$.75*
69.00 - 74.99	*$1.18*	*$.62*
75.00 - 80.99	*$1.06*	*$.47*
81.00 - 86.99	*$ .92*	*$.31*
87.00 - 92.99	*$ .76*	*$.13*
93.00 - 98.99	*$ .53*	—

[(Effective 7-1-82)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below*	—	—
32.00 - 33.99	$1.38	$.87
34.00 - 35.99	$1.29	$.75
36.00 - 37.99	$1.18	$.62
38.00 - 39.99	$1.06	$.47
40.00 - 41.99	$ .92	$.31
42.00 - 43.99	$ .76	$.13
44.00 - 45.99	$ .53	—]

*For a basic per diem of *$56.99* [$31.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$36.99 & below**	—	—
37.00 - 38.99	*$1.38*	*$.87*
39.00 - 40.99	*$1.29*	*$.75*
41.00 - 42.99	*$1.18*	*$.62*
43.00 - 44.99	*$1.06*	*$.47*
45.00 - 46.99	*$ .92*	*$.31*
47.00 - 48.99	*$ .76*	*$.13*
49.00 - 52.39	*$ .53*	—

*Maximum Payment $52.39***

[(Effective 7-1-83)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$34.99 & below*	—	—
35.00 - 36.99	$1.38	$.87
37.00 - 38.99	$1.29	$.75
39.00 - 40.99	$1.18	$.62
41.00 - 42.99	$1.06	$.47
43.00 - 44.99	$ .92	$.31
45.00 - 46.99	$ .76	$.13
47.00 - 49.35	$ .53	—]

[Maximum Payment $49.35**]

*For a basic per diem of *$36.99* [$34.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

**The maximum payment for hospital based skilled nursing facilities is set at *$84.14* [$79.47].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 105 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 105 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 105 percent of the median is a lower dollar amount than has been currently set.

Section 5. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Medical Assistance, a re-evaluation of the point at issue. This request must be received within *forty-five (45)* [twenty (20)] days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review *or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.*

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division of Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Division of Management and Development, Department for Social Insurance. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within *thirty (30)* [twenty (20)] days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary
APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 6, 1984 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:055E. Payments for primary care center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS [13.082,] 194.050
EFFECTIVE: July 6, 1984 at 9 a.m.
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 primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325 , the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet , on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, *1984* [1983], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) Reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed *for the year beginning each* [in] July [each year], and shall be based on a projection of the change in the medical component of the Consumer Price Index *over the previous year* [(for the rate year as compared to the previous year)] as applied to the [weighted] median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(6) The amount of any allowable incentive payment

determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition Against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or sub-units of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 6, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:016E. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS [13.082,] 205.200(2)
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met. The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

(2) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(3) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(4) "Full-time school attendance" means a workload of at least:

(a) Twenty-five (25) clock hours per week in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time.

(5) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(6) "Gross income limitation standard" means 150 percent of the sum of the assistance standard, as set forth in Section 8, and any educational allowance as set forth in Section 9.

(7) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(8) "Recoupment" means recovery of overpayments of assistance payments.

(9) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

Section 2. Resource Limitations. [The amount of] Real and personal property *owned in whole or in part by an applicant or recipient including his/her parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount* that can be reserved by each assistance unit shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise; [and]

(f) Items valued at less than fifty (50) dollars each; *and*

(g) Other items/benefits mandated by federal regulation.

(2) Disposition of resources. An applicant/recipient [or the spouse living with any applicant or recipient] must not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of natural parent(s), and/or *amount deemed available from a* stepparent(s) living in the home, and/or amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4, subsection (1), shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the *assistance group* [applicant] has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4, subsections (1) and (2), shall be compared to the assistance standard set forth in Section 8. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4, subsections (1), (2), and (3). If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(D), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received [in the month of application or redetermination] by the assistance group, natural parent(s) and/or stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income, as set forth in Section 5;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)*(B)* and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program under the Job Training Partnership Act (JTPA);

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for [WIN] training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training *programs under the WIN program*;

(h) Value of *the monthly allotment of*food *stamp* coupons *or value of United States Department of Agriculture (USDA) donated foods*;

(i) Non-emergency medical transportation payments;

(j) Principal of loans;

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans *to any undergraduate made or insured under any program* administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce *utilized* for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption; and

(x) Energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i).

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full time;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time employment. A forty (40) dollar deduction is allowed for part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $160 per month per individual for full-time employment or $110 per month per individual for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2), as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. This disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income unless he/she has not been a recipient for twelve (12) consecutive months in accordance with 45 CFR 233.20(a)(11)(ii)(B).

(4) Exceptions. Disregards from earnings in subsection (2)(c) and (d) and subsection (3)(b) shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

Section 5. Stepparent Income and Resources. (1) Income. The gross income of a stepparent living in the home is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent who is employed full time or the first forty (40) dollars of the gross earned income of the stepparent who is employed part time;

(b) An amount equal to the AFDC assistance standard 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 AFDC eligibility determination and are or could be claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent to individuals not living in the home who are or could be claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent receiving Supplemental Security Income (SSI) under Title XVI.

(2) Resources. Resources which *belong solely* [are available] to the stepparent are *not* [deemed available to the natural parent and] considered in determining eligibility of the natural parent *or* [for inclusion in] the assistance group. [Resources of a stepparent receiving SSI under Title XVI shall not be considered.]

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) hereinafter referred to as sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or could be claimed by the sponsor as dependents in determining his/her federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to non-household members who are or could be claimed as dependents in determining his/her federal personal tax liability;

(d) Actual payments of alimony or child support paid to non-household members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he/she were an AFDC applicant in this state, less $1,500.

Section 7. Earned Income Tax Credit. In the case of an applicant or recipient of AFDC, earned income shall include the amount of advance payments of the earned income credit for which he/she is eligible determined in accordance with 45 CFR 233.20(a)(6)(ix).

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Number of Eligible Persons	Monthly Standard
1 child	$*140* [133]
2 Persons	$*170* [162]
3 Persons	$*197* [188]
4 Persons	$*246* [235]
5 Persons	$*288* [275]
6 Persons	$*325* [310]
7 or more Persons	$*362* [345]

Section 9. Educational Allowance. An educational allowance shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for said month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly.

(1) Technical requirements. The following requirements must be met during any month for which an education allowance is paid.

(a) The caretaker relative must be included in the assistance grant;

(b) The caretaker relative must be enrolled full time, as defined in Section 1, in high school (including primary and secondary), vocational school, or a General Educational Development (GED) program for which no wage or child care allowance is received. If attending college, the caretaker relative must be enrolled either full or part-time, as defined in Section 1;

(c) A cost must have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines said child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. The payment standards are as follows:

Number of Children	Full-time Enrollment	Part-time Enrollment
1	$120	$70
2 or more	$150	$90

(3) Limitations. The number of months an educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Education Development (GED)	12 months
High School (includes Primary and Secondary)	24 months

2. A student wishing to continue his/her education past the high school level may be eligible for additional payments not to exceed the maximums for the post-high school level.

(b) Post-high school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; and/or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8; and/or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective July 1, 1984.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 2:140E. Supplementary policies for programs administered by the Department for Social Insurance.

RELATES TO: KRS 194.030(6) and Chapter 205
PURSUANT TO: KRS 194.050
EFFECTIVE: July 11, 1984
NECESSITY AND FUNCTION: KRS 194.010 designates the Cabinet for Human Resources as the primary state agency responsible for the development and operation of assistance programs, and KRS 194.050 empowers the secretary of the Cabinet for Human Resources to adopt, administer and enforce regulations sufficient to operate the programs and fulfill the responsibilities vested in the cabinet. This regulation states the general policy of the cabinet with regard to program materials incorporated into regulatory form by reference for use by the Department for Social Insurance, and incorporates by reference materials related to the programs of aid to families with dependent children, medical assistance, home energy assistance, refugee assistance, food stamps, child support enforcement, state supplemental payments for the aged, blind or disabled, disability determination, and collections which are essential for the implementation of those programs.

Section 1. General Policy Relating to Program Materials Incorporated by Reference. (1) Kentucky administrative regulations relating to program matters reflect the policy of the cabinet with regard to the issues addressed in the regulation.

(2) Materials incorporated by reference shall be construed and interpreted in such a manner as to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations. *All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management & Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.*

Section 2. Incorporation by Reference. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Department for Social Insurance Manual of Operations, effective *July 1* [May 16], 1984;

(2) Department for Social Insurance Manual of Forms, effective *July 1* [May 16], 1984; and

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective May 16, 1984.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 11, 1984 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 3:035E. Certification process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS [13.082,] 194.050
EFFECTIVE: June 20, 1984
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), 273.10(e) and, as appropriate, 273.21(e) *and 273.21(g), and any waivers thereto approved by the federal Food and Nutrition Service (FNS)* shall be used [, unless specifically waived by the federal Food and Nutrition Service (FNS),] 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) *and 273.21(a)(3).* Households in which all members are included in a PA grant shall be certified for a period of time which ensures, to the extent possible, that the recertification date and the PA reinvestigation date coincide.

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), Part 273.14 and Part 273.21 *(q)* [(p)], unless specifically waived by FNS.

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 excluded household members which have been disqualified from program participation due to intentional program violation, failure to provide a Social Security number, because they are ineligible aliens, or 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 non-household members shall 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 who receive benefits under Title II or Title XVI of the Social Security Act shall have their case processed in accordance with 7 CFR Part 273.11(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) Households containing a sponsored alien(s) shall have their case processed in accordance with 7 CFR Part 273.11(h).

(13) Households which are required to comply with mandatory monthly reporting criteria shall have their case processed *and shall comply with reporting requirements* in accordance with 7 CFR Part 273.21 and waivers thereto approved by FNS, with selected options as follows:

(a) A two (2) month system shall be used whereby the issuance month is the second month following its corresponding budget month. This system includes two (2) or three (3) beginning months, the month of application and/or *month of* approval and the following month. *Eligibility and benefit calcualtion shall be determined prospectively for the beginning months.*

(b) *For households reporting monthly,* ongoing eligibility [and benefits] shall be determined by considering all factors of eligibility *prospectively* [retrospectively. However, any factor which causes ineligibility propsectively, for a period longer than one (1) month, shall be acted upon immediately] *benefits shall be determined retrospectively. However, any factor which causes ineligibility prospectively, for a period longer than one (1) month, shall be acted upon immediately.* [Initial eligibility and benefit calculation shall be determined prospectvely for the beginning months.] *For households reporting less frequently than monthly, ongoing eligibility and benefits shall be determined propsectively.*

[(c) Circumstances and income received in the appropriate budget month shall be considered for the corresponding issuance month.]

(c) [(d) Consider] The amount of the PA grant which was issued *in the base month shall be considered* in the corresponding budget month.

(d) [(e)] Counties *shall* [will] terminate or suspend cases in accordance with 7 CFR Part 273.21(m) *and 273.21(n).*

(e) [(f) Households shall be recertified using] The recertification form [which] shall serve as the [monthly] report required for that month *in which a household must be recertified.*

(f) [(g)] All households specified in 7 CFR Part 273.21(b)(2), as well as any others exempted by the appropriate federal agency, 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 which are required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(13) of this regulation.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An or-

dinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:090E. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
EFFECTIVE: July 11, 1984
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 Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance. *All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management & Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.*

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:

(1) Federal food stamp regulations at 7 CFR Parts *270* [251]-282, and interim final regulations at 7 CFR Parts 251, *270*-282, effective *July 1* [May 16], 1984;

(2) Department for Social Insurance Food Stamp Handbook, effective *July 1* [May 16], 1984; and

(3) Federal food stamp regional letters as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, [and] 84-36, *84-37, 84-38, and 84-39,* effective *July 1* [May 16], 1984.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1984
FILED WITH LRC: June 11, 1984 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 341, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Employment Services

904 KAR 5:270E. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
EFFECTIVE: July 6, 1984
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1984, and prior to July 1, 1985. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1983 was 12,791,694;

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,065,975;

(3) The "total wages" reported by subject employers for the calendar year of 1983 was $16,894,998,249;

(4) The "average weekly wage" for the calendar year of 1983 for insured employment, obtained by dividing the average montly employment into total wages for such year and dividing by fifty-two (52), was $304.80;

(5) Fifty-five (55) percent of the average weekly wage of $304.80 for the calendar year of 1983 was $167.64;
(6) However, the "trust fund balance" as of December 31, 1983, was $40,000, (the outstanding loan from the Federal Unemployment Trust Fund was $150,567,748) and KRS 341.380 states that if the trust fund balance on December 31 is less than $120,000,000 the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate; and
(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1984, and prior to the first day of July, 1985, is determined to be $140.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 6, 1984 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management

905 KAR 1:170E. Child abuse self-help groups.

RELATES TO: KRS 213.190
PURSUANT TO: KRS 194.050
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: KRS 213.190 requires the Cabinet for Human Resources to use funds received from the 1984 increase in the cost of birth certificates to contract for the operation of non-profit/self-help groups for abusive parents. KRS 194.050 authorizes the cabinet to adopt such rules and regulations as are necessary to operate programs vested in the Cabinet for Human Resources.

Section 1. Definitions. (1) "Private, not for profit group" means any entity incorporated as a non-stock/non-profit corporation under KRS Chapter 273 with articles of incorporation filed with the Secretary of State.
(2) "Self-help group" means a group of two (2) or more parents of children under the age of eighteen (18), under the sponsorship of a private, not for profit self-help corporation, who through group interaction voluntarily assist themselves in preventing or ceasing their physical, sexual, or mental abuse of their children.

Section 2. Application. Any corporation that meets the requirements of Section 1 of this regulation may apply to the Department for Social Services for funds available from the one (1) dollar allocated to the department from the sale of birth certificates. The application shall be in accordance with the Request for Proposal (RFP) provided by the department. The department may require proof of incorporation and purpose of the organization.

Section 3. Funding. Funds received by the Department for Social Services from the sale of birth certificates shall be deposited in the Kentucky State Treasury in a Trust and Agency account to be used exclusively for carrying out the provisions of KRS 213.190(2). Any funds available at the close of any fiscal year shall not lapse to the general fund, but shall be carried forward to the next fiscal year for use in accordance with KRS 213.190(2).

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management

905 KAR 5:030E. Matching formula for general funds.

RELATES TO: KRS 209.030(7)
PURSUANT TO: KRS 209.030(1)
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: KRS 209.030(7) requires the Cabinet for Human Resources to provide protective services for adults except in cases where the adult refuses such services. KRS 209.030(1) authorizes the cabinet to adopt such rules, regulations, procedures, guidelines or policies necessary to protect adults. The function of this regulation is to set forth the matching requirements necessary to receive state general fund dollars for spouse abuse shelters and services.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Certified expenditures" means any non-state cash expenditures incurred by the local provider of spouse abuse shelter or services when such expenditures are determined to be allowable, reasonable and necessary under applicable state laws and regulations and are not used to match any other

grant or contract. Such certified expenditures may be incurred by the provider of service whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.

(3) "In-kind contributions" means property or services which directly benefit the services purchased; which are contributed by the provider or a third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with state laws and regulations, if purchased by the provider.

(4) "Local matching funds" means any non-state cash available to the local provider for use in the spouse abuse shelter or service, and which is not used to match any other grant or contract.

Section 2. Matching Formula. All local providers of spouse abuse shelter and services under contract with the cabinet using state general fund dollars shall be required to provide matching at the rate of twenty-five (25) percent local to seventy-five (75) percent state general fund dollars. Local match shall be at least five (5) percent cash and the remainder may be in certified expenditures and/or in-kind contributions.

Section 3. Documentation. The local provider of spouse abuse shelter and services shall maintain documentation of the local match that is sufficient to determine that all requirements of this regulation are met. Records documenting local match, regardless of the type or source, shall be available to the cabinet and/or authorized entities for the purpose of audits.

Section 4. Disallowance. The local provider of spouse abuse shelter and services may be subject to disallowances and reimbursement to the Commonwealth, if such local match is not documented by the provider or third party.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 13, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services

905 KAR 7:050E. Group home procedural manual.

RELATES TO: KRS Chapter 208
PURSUANT TO: KRS 194.050
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: P.L. 97-35, Subpart C, "Social Services Block Grant, Title XX" authorizes grants to states for the provision of social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to qualify for receipt of federal funds. The function of this regulation is to set forth procedures for the operation of group homes by the Department for Social Services.

Section 1. Incorporation by Reference. The Cabinet for Human Resources, Department for Social Services, hereby incorporates by reference the Procedural Manual for Group Homes dated June 11, 1984. The manual contains policies and procedures for the operation of group homes. The manual may be reviewed in the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice since no administrative regulation has been filed with respect to these subject matters previously. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
E. AUSTIN, JR., Secretary
Cabinet for Human Resources

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services

905 KAR 7:090E. Patient charges at children's treatment services.

RELATES TO: KRS 210.700 to 210.760
PURSUANT TO: KRS 210.710, 210.720, 210.750
EFFECTIVE: June 20, 1984
NECESSITY AND FUNCTION: KRS 210.720 directs the Secretary of the Cabinet for Human Resources to fix the patient cost per day for board, maintenance and treatment for facilities operated by the cabinet. The function of this regulation is to set forth the formula for patient costs at the Children's Treatment Services in accordance with the Patient Liability Act of 1978, KRS 210.700 to 210.760.

Section 1. Per Diem Cost. The per diem patient cost at Children's Treatment Services for board maintenance and treatment shall be derived by dividing the total per diem cost by the daily population.

Section 2. Ancillary Charges. In addition to the per diem cost as set forth in Section 1 of this regulation, ancillary charges at actual cost shall be made for such services as

physicians, E.E.G., E.K.G, occupational therapy, physical therapy, oxygen therapy, psychological testing, pharmacy, laboratory, x-ray, and speech and hearing therapy.

Section 3. Billings. Hospital billings shall occur in the following priority order: private, third party payor (insurance), medical assistance and individual or party responsible in accordance with the individual's ability to pay.

Section 4. Collections. The Children's Treatment Services through Central State Hospital Collections Department shall maximize reimbursement for services through third party payors and clients. Collections shall consider the patients' individual financial position in accordance with the patients' liability and his ability to pay in accordance with the means test adopted by the Secretary for Human Resources as set forth in 902 KAR 12:070. The Collections Department at Central State Hospital shall provide and maintain proper accounting and financial information for all patients and provide such information to each patient upon request.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 14, 1984
FILED WITH LRC: June 20, 1984 at 8:30 a.m.

Amended Regulation Now in Effect

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Banking
As Amended

808 KAR 11:010. Acquisitions.

RELATES TO: KRS 287.900
PURSUANT TO: KRS 287.020
EFFECTIVE: June 28, 1984
NECESSITY AND FUNCTION: KRS 287.900 permits the formation of multibank holding companies and multiple bank ownership by individuals in Kentucky. This administrative regulation is to insure uniformity in the interpretation of those provisions which apply to the acquisition of banks by individuals and bank holding companies.

Section 1. (1) Fifteen (15) percent deposit limitation. Once every calendar year, the department shall prepare a deposit summary which lists the total deposits in all banks in this state based upon the year-end reports made by the banks to their respective supervisory authorities. The departmental deposit summary shall be prepared as soon as practical following compilation of the data contained in the year-end reports.

(2) The year-end reports to be used by the department are the December 31, Report of Condition filed by the respective banks with the appropriate federal regulatory agencies to include the Federal Deposit Insurance Corporation for state non-member banks, the Federal Reserve Board for state member banks and the Comptroller of the Currency for national banks.

(3) Bank acquisitions under consideration by the department shall be based upon the departmental deposit summary available at the time of the acquisition application.

(4) In calculating the total deposits for the acquiring individual or company and the bank being acquired, the deposits for the year the departmental deposit summary is available shall be used.

Section 2. Acquisition Period. (1) The five (5), twelve (12) month periods after the effective date of KRS 287.900 during which individuals or companies may not acquire, directly or indirectly, control of more than three (3) banks in this state shall *commence on the date that the individual or bank holding company acquires a bank.* [be as follows:]
[First Year—July 13, 1984—July 12, 1985;
Second Year—July 13, 1985—July 12, 1986;
Third Year—July 13, 1986—July 12, 1987;
Fourth Year—July 13, 1987—July 12, 1988; and
Fifth Year—July 13, 1988—July 12, 1989.]

(2) Effective July 13, 1989, the limitation on the number of bank acquisitions is removed, and individuals and companies may acquire an unlimited number of banks so long as the acquisitions do not exceed the fifteen (15) percent deposit limitation.

Section 3. Emergency Acquisitions. If the commissioner or the Comptroller of the Currency determines that an emergency exists in regard to a state-chartered or national bank respectively, an individual or company may acquire control of the failing bank or bank holding company without being restricted by the three (3) bank acquisition limitation, the fifteen (15) percent deposit limitation or the time limitations for filing for change of control. Approval of the acquisition shall be based on the financial condition, the competence, experience and integrity of the individual or acquiring company or its principals.

BALLARD W. CASSADY, JR., Commissioner
APPROVED BY AGENCY: May 14, 1984
FILED WITH LRC: May 15, 1984 at 11:30 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wanda Harrod
(1) Type and number of entities affected: Individuals and multibank holding companies.
(a) Direct and indirect costs or savings to those affected: NONE
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: NONE
(2) Effects on the promulgating administrative body: NONE
(a) Direct and indirect costs or savings: NONE
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: NONE
(3) Assessment of anticipated effect on state and local revenues: UNKNOWN
(4) Assessment of alternative methods; reasons why alternatives were rejected: DNA
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: NONE
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? NO. Uniform application to all regulated financial institutions

Amended After Hearing

LEGISLATIVE RESEARCH COMMISSION
Administrative Regulations
(Amended After Hearing)

1 KAR 1:010. Form of administrative regulations; Administrative Register; codification.

RELATES TO: KRS Chapter 13A
PURSUANT TO: KRS *13A.070*[13.090]
NECESSITY AND FUNCTION: KRS *Chapter 13A* [13.090] requires the Legislative Research Commission to prescribe rules governing the manner and form in which *administrative* regulations shall be prepared. This proposed *administrative* regulation is to assure uniformity of all proposed *administrative* regulations submitted for publication in the Administrative Register.

Section 1. Definitions. (1) "Material incorporated by reference" may include:
(a) Material which is copyrighted by other than the Commonwealth of Kentucky or one of its administrative bodies;
(b) Federal statutes;
(c) Code of Federal Regulations; or
(d) Any other material the publication of which would be unduly cumbersome, bulky or expensive.
(2) "Text" means the enumerated sections of an administrative regulation to be published in the Administrative Register, and does not include:
(a) Material incorporated by reference;
(b) The regulatory impact analysis;
(c) The fiscal impact statement; and
(d) The tiering statement.

Section *2.* [1.] Subject to the exceptions set forth in KRS *Chapter 13A* [13.080], the *administrative* regulations required to be filed to be effective include every regulatory document, promulgated by an *administrative body* [agency] of the Commonwealth, which is intended to have general future applicability and legal effect and will be relied upon by the agency as authority for, or invoked or used in the discharge of, any of its functions or activities. [An agency may incorporate by reference *any* material, the publication of which would be unduly cumbersome, bulky or expensive.] The *administrative* regulation incorporating [this] material by reference shall include a summary of the *incorporated material* [subject matter], the date of incorporation by reference and information on how the material may be obtained. The material shall be regulatory only in the form existing at the date of incorporation by reference *and shall be available for public inspection at the main office of the promulgating administrative body.* The complete text of the material incorporated by reference shall be forwarded to the Legislative Research Commission at the time the proposed *administrative* regulation incorporating the material is forwarded. *If the material incorporated by reference is to be amended, repealed or rescinded, the administrative body shall amend the administrative regulation through the amendment process set out in KRS Chapter 13A and this administrative regulation.*

Section *3.* [2.] Each proposed *administrative* regulation forwarded to the Legislative Research Commission and each duplicate shall be typewritten or mechanically reproduced on a separate sheet of white paper size 8½ x 11 inches. The cabinet, [and] department *and division* of the administrative body shall be listed at the top of *the first* [each] page. A space at least two (2) inches square in the upper right hand corner shall be left clear for the Legislative Research Commission's stamp showing the date and time of receipt of the proposed *administrative* regulation. Each proposed *administrative* regulation shall include in the upper left hand corner the statute number to which the *administrative* regulation relates or which will be affected by the *administrative* regulation, and a citation of the statutory authority pursuant to which it was adopted. Beneath these citations shall be a brief statement which sets forth the necessity for issuing the *administrative* regulation and a summary of the functions intended to be implemented by the *administrative* regulation. A proposed *administrative* regulation affecting an existing *administrative* regulation shall set forth the number of the *administrative* regulation being amended, superseded or repealed as the case may be. No *administrative* regulation may be amended by reference to a section only. The proposed amendment shall contain the full text of the *administrative* regulation being amended. Each proposed *administrative* regulation shall bear the date of *approval of the administrative body* [adoption]. The original copy shall be signed by the proper authority of the *promulgating*

[adopting] administrative body and by an attorney, officially representing the agency, certifying that he has examined and approved the proposed *administrative* regulation as to form [and legality]. Each proposed *administrative* regulation shall state the place, *time and date of the public hearing scheduled* and *the* manner in which interested persons may submit their *notification of attending the public hearing* [views or request a hearing] pursuant to KRS *Chapter 13A* [13.085(4)].

Section 4. [3.] *(1)* In proposed *amendments to an existing administrative* regulation[s amending a regulation that has become effective after July 1, 1974], the new wording shall be underlined and the deleted wording shall be placed in brackets. Generally the new wording should precede the bracketed wording but there may be exceptions for the sake of clarity.

(2) In addition to the provisions of subsection (1) of this section, when a proposed administrative regulation amends material incorporated by reference, the following provisions shall apply:

(a) The amendment may be accomplished by:

1. Submission of an entire new document; or

2. Submission of the page or pages of the document in which changes have been made with the changes accomplished in the manner specified in subsection (1) of this section.

(b) If an entire new document is submitted, a summary of the changes and their effect upon the document shall be included in the administrative regulation amending the material incorporated by reference.

(c) If replacement pages are submitted, a summary listing the pages upon which changes have been made, a summary of the changes and their effect upon the document shall be included in the administrative regulation amending the material incorporated by reference.

(d) The new document submitted under paragraph (a)1 of this subsection and pages submitted under paragraph (a)2 of this subsection shall not be published in the Administrative Register but shall be available for public inspection as provided in Section 1 of this regulation; and the administrative body shall, upon request, notify interested parties as to where the material may be obtained.

Section 5. [4.] The Administrative Register shall be published the first day of each month and shall include all proposed *administrative* regulations received by the Legislative Research Commission by *noon on* the fifteenth day of the preceding month. When the fifteenth day falls on a Saturday, Sunday, or holiday the deadline is *noon on* the working day which immediately precedes the Saturday, Sunday, or holiday.

Section 6. [5.] The administrative body shall, [immediately] upon receipt *from public participants of their intent to attend the public hearing, notify the Regulations Compiler by telephone that the public hearing will be held. If no written notice of intent to attend the public hearing is received at least five (5) days before the hearing, the administrative body shall immediately notify the Regulations Compiler by telephone and follow-up letter if they choose to cancel [that] the public hearing [has been cancelled]* [of a request for a public hearing pursuant to KRS 13.085, notify in writing the Administrative Regulations Compiler of the date, time and place of the scheduled hearing]. Following completion of the hearing, the administrative body shall [promptly] forward to the Legislative Research Commission *within fifteen (15) days after the public hearing* a copy of the *administrative* regulation [accompanied by a statement] indicating any changes in the original wording *resulting from the hearing*[, a summary of any comments submitted at the hearing,] and a statement of [affirmative] consideration as required by KRS *13A.280* [13.085(4)]. Upon receipt of these documents, the proposed *administrative* regulation will be submitted to the *appropriate review subcommittee of the* Legislative Research Commission. [The Legislative Research Commission shall act on a proposed regulation within forty (40) days of publication unless a public hearing is scheduled.]

Section 7. [6.] The Administrative Regulations Compiler shall codify prior to publication all *administrative* regulations received by the Legislative Research Commission. The numbering within the body of the *administrative* regulation shall be the responsibility of the promulgating body. However, the Compiler retains the authority to divide or renumber a*n administrative* regulation if necessary for clarity. The following formula shall be employed by the administrative body in the numbering of each *administrative* regulation. Each section shall begin with the word "Section" followed by an arabic number. Subsections shall be designated by an arabic number in parentheses. *Paragraphs shall be designated by letters of the alphabet in parentheses, e.g. (a), (b), (c), etc. Subparagraphs shall be designated by an arabic number followed by a period, e.g., 1., 2., etc.*

Section 8. [7.] (1) An administrative body shall attach to the back of the original and each copy of a proposed administrative regulation the following forms:

(a) Regulatory impact analysis;

(b) If the administrative regulation was not tiered, a written statement as to why tiering was not used; and

(c) Fiscal note if the administrative regulation relates to any aspect of local government or any service provided thereby.

(2) The forms required in subsection (1) of this section are hereby adopted by reference.

REP. BOBBY RICHARDSON, Co-Chairman
SEN. JOE PRATHER, Co-chairman
VIC HELLARD, Director

APPROVED BY AGENCY: June 27, 1984
FILED WITH LRC: June 27, 1984 at noon.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Harding

(1) Type and number of entities affected: Administrative bodies with authority to promulgate administrative regulations

(a) Direct and indirect costs or savings to those affected: NONE

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Will require additional paperwork for the "sunset" provisions; requirements for promulgating regulations will not increase

(2) Effects on the promulgating administrative body: Basic procedures for Legislative Research Commission remain the same

(a) Direct and indirect costs or savings: NONE

1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase; more information will be required to be published in the Administrative Register
(3) Assessment of anticipated effect on state and local revenues: NONE
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives; regulation required by KRS Chapter 13A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Conflicts in statutes not amended to conform with new promulgation procedure
(a) Necessity of proposed regulation if in conflict: Regulation is required in KRS Chapter 13A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Statutes in conflict with KRS Chapter 13A should possibly be amended during the 1986 General Assembly to conform to the new law.

Tiering:
Was tiering applied? NO. Administrative bodies are required by KRS Chapter 13A to follow a uniform procedure for promulgating administrative regulations.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Kentucky Nature Preserves Commission
Amended After Hearing

400 KAR 2:010. Definitions.

RELATES TO: KRS 146.425, 146.460, 146.490
PURSUANT TO: KRS 146.485
NECESSITY AND FUNCTION: KRS 146.485 requires the Kentucky Nature Preserves Commission to develop regulations for the selection, acquisition, management, protection and use of natural areas and nature preserves, and for the conduct of commission affairs. This regulation provides for the defining of certain essential terms used in 400 KAR 2:020 through 400 KAR 2:050.

Section 1. (1) "Advisor" means any individual selected by the commission to serve in an advisory capacity to the commission pursuant to KRS 146.435;
(2) "Articles of dedication" means the writing by which any estate, interest, or right in a natural area *and/or buffer area* is formally dedicated as provided in KRS 146.410 to 146.530;
(3) "Act" means the enabling legislation of the Kentucky Nature Preserves Commission KRS 146.410 to 146.530;
(4) "Commission" means the Kentucky Nature Preserves Commission;
(5) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;
(6) "Secretary" means the Secretary of the Natural Resources and Envirnomental Protection Cabinet;
(7) "Custodian" means any person, organization, agency, or institution [as] selected by the commission to serve as the managing agent for a nature preserve;
(8) "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which *either* retains or has reestablished to some degree, in the judgment of the commission, its natural character, though it need not be completely natural and undisturbed, *or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest* [; or provides habitat for endangered, threatened, or special concern plants and animals; or has a unique or diverse biological or ecological significance; or has an interesting or rare biological community; or has geological, cultural, historical, or educational significance];
(9) "*Nature* [Natural] preserve" means a natural area, and land necessary for its protection, any estate, interest or right which has been formerly dedicated under the provisions of KRS 146.410 to 146.530 *to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance, or artifical development, for the public purposes of present and future scientific research, education, aesthetic enjoyment, and habitat for plant and animal species and other natural objects* [and for which articles of dedication have been ratified and filed];
(10) *"Inventory of natural types, flora and fauna" is a list of flora and fauna occurring in Kentucky, and of natural types identified by the commission to be monitored for the purpose of complying with the provisions of the Act;* ["Endangered" means a species which is monitored by the commission and is in danger of extirpation and/or extinction throughout all or a significant portion of its range in Kentucky, including those species proposed or recognized as federally endangered that occur in Kentucky;]
[(11) "Threatened" means a species which is monitored by the commission and is likely to become endangered within the foreseeable future throughout all or a significant portion of its range in Kentucky, including those species proposed or recognized as federally threatened that occur in Kentucky;]
[(12) "Special concern" means a species that is monitored by the commission because it exists in a limited geographic area, it may become threatened or endangered due to modification or destruction of habitat, certain characteristics or requirements make it especially vulnerable to specific pressures, or experienced researchers have identified other factors which threaten its existence in Kentucky;]
[(13) "List of endangered, threatened, and special concern plants and animals" means the list of those species which have been identified by the commission;]
(11) [(14)] "Register of natural areas" means the list of those natural areas worthy of preservation but not available for dedication. Terrestrial natural areas may only be registered with the consent of the landowner; stream segments may be registered upon such a determination by the commission.

JON E. RICKERT, Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 2:30 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Kentucky Nature Preserves Commission
(Amended After Hearing)

400 KAR 2:030. Dedication of nature preserves and registration of natural areas.

RELATES TO: KRS 146.410, 146.420, 146.440, 146.470, 146.490, 146.505
PURSUANT TO: KRS 146.460, 146.465, 146.475, 146.485, 146.495
NECESSITY AND FUNCTION: KRS 146.485 requires the commission to establish rules for the selection, acquisition, management, protection, and use of natural areas and nature preserves, and to maintain a state registry of natural areas, an inventory of natural types, flora and fauna, and other records of natural areas and nature preserves. This regulation sets forth procedures for the dedication and maintenance of nature preserves, and the registration and maintenance of inventories relating to natural areas and nature preserves.

Section 1. Dedication of Nature Preserves. (1) Upon the determination by the director of the commission that an area constitutes a natural area worthy of protection through dedication as a nature preserve, and that the owner is willing to have his land or a portion thereof dedicated as a nature preserve, the director may recommend to the commission that the area be dedicated as a nature preserve.

(2) (a) A natural area shall become a nature preserve upon acceptance of [the] articles of dedication by the commission.

(b) Articles of dedication shall be recorded in the county in which the natural area is located, the office of the secretary of state, and the office of the commission.

Section 2. Articles of Dedication. (1) The articles of dedication shall be *used as the guidelines for* the management *of* [document for] each nature preserve. Management, use, development and public access of each nature preserve shall be in accordance with the provisions set forth in the articles of dedication [, or as provided by these regulations].

(2) The articles of dedication may contain restrictions relating to management, use, development, transfer, and public access, as well as such other provisions as may be necessary to further the purposes of the Act.

(3) Articles of dedication may vary in provisions from one (1) nature preserve to another in accordance with differences in the characteristics and conditions of the area involved, or for other reasons found necessary by the commission and the landowner, grantor, devisor, or donor.

(4) Before the Commonwealth of Kentucky, through the commission, acquires a nature preserve [in fee simple], it shall be the responsibility of the director to propose to the commission provisions for incorporation into the articles of dedication.

Section 3. Amendment of Articles of Dedication. (1) Articles of dedication may be amended by the commission upon a finding by the commission that such amendment will not permit an impairment, disturbance, use or development of the nature preserve inconsistent with the purposes for which the area was dedicated or inconsistent with the Act.

(2) If fee simple ownership is not held by the Commonwealth of Kentucky, no amendment to the articles of dedication shall be made without the written consent of the owner of other interests therein.

(3) Findings and determinations of the commission to amend articles of dedication may be set forth in the minutes of the commission.

Section 4. Buffer Areas. (1) For the purpose of protecting a nature preserve, adjoining land that is not otherwise suitable for dedication as part of the nature preserve may be dedicated as a buffer area in the same manner as a nature preserve.

(2) The articles of dedication may contain provisions for the management, use, development, and public access of the buffer area that differ from those for the adjacent nature preserve.

Section 5. Registration of Natural Areas. (1) Upon the determination by the director of the commission that an area constitutes a natural area worthy of preservation, which is not otherwise available for dedication, the director may recommend to the commission that the area be entered into the register of natural areas.

(2) No area shall be registered without the consent of the landowner or managing public agency.

(a) Such consent may include an agreement by the landowner to give notice to the commission of any change in ownership, allow limited public access, or include voluntary management agreements designed to protect the natural features of the area.

(b) Upon request of the landowner or managing public agency the location of registered areas shall be kept confidential and not released as a public record of the commission. Specific information as to the location of the registered natural area also may, upon determination by the commission, be restricted so as to assure protection of the natural features and limit uncontrolled visitation.

(3) Registration by the commission of certain natural areas, where no landowner or managing public agency can give consent, involving stream segments deemed waters of the Commonwealth, shall be by determination of the commission.

Section 6. Identification of Natural Areas. (1) For the purposes of identifying natural areas for potential protection as nature preserves areas, the commission may develop, maintain, and periodically update *an inventory of natural types, flora and fauna. The commission shall use the inventory, and the best available scientific information, to identify species of animals and plants to be monitored by the commission,* [a state list of endangered, threatened and special concern flora and fauna, adding and deleting entries to the list based upon biological information].

(2) The commission may develop, maintain, and update a list of natural areas which warrant protection through dedication as a nature preserve or registration as a natural area.

Section 7. Selection of Custodian. (1) When the commission has acquired an interest less than [a] fee simple in a nature preserve, the selection of a custodian may be made by the owner of the other interest therein subject to the rules and regulations of the commission and the articles of dedication for the nature preserve. Otherwise the commission shall determine the custodian, if any.

(a) The custodian shall demonstrate to the commission the ability to administer the nature preserve in accordance with the articles of dedication and these regulations.

(b) The commission shall act as custodian of a [the] nature preserve until such time as a custodian is approved,

or if the custodian fails to administer *a* [the] nature preserve in accordance with the articles of dedication and these regulations.

(2) When the commission has acquired a fee simple interest in a nature preserve, the commission may select a custodian.

(a) The commission shall publish notice of its intent to select a custodian in the county, or counties, in which the preserve is located, and[/or] for the state at large.

(b) The notice shall state:

1. The location of the nature preserve.
2. Where the articles of dedication are recorded.
3. That a written proposal is to be submitted to the commission.
4. The date by which the proposal shall be submitted.
5. The address to which the proposal shall be submitted.

(c) *The date by which the written proposal is to be submitted to the commission shall be not less than sixty (60) days after the date of publication of the notice.* [If more than one (1) proposal is received,]

(d) A hearing shall be conducted for the purpose of selecting a custodian pursuant to the provisions of 400 KAR 2:050.

JON E. RICKERT, Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 2:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Kentucky Nature Preserves Commission
Amended After Hearing

400 KAR 2:040. Management, use, and protection of nature preserves.

RELATES TO: KRS 146.410, 146.440
PURSUANT TO: KRS 146.465, 146.475, 146.485
NECESSITY AND FUNCTION: KRS 146.485 requires the commission to establish rules for the management, use, and protection of nature preserves. This regulation sets forth rules to be applied to the management and use of all nature preserves, and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. These rules shall apply to all nature preserves unless exceptions are set forth in the articles of dedication. The reasons for any exceptions shall be set forth in the records of the commission.

Section 2. Boundary Markers. (1) Nature preserves boundaries shall be made evident by posting boundary markers in a conspicuous manner, or as approved by the commission.

(2) Boundary fences and barriers may be installed as approved by the commission; such shall not be in a form that will create a detrimental effect on movement of wildlife or other natural objects.

Section 3. Intrusions. There shall be no intrusions of structures, easements, rights-of-way, or land uses which do not conform with these rules and with the purposes and definition of a nature preserve as specified in the Act, except as allowed by the articles of dedication.

Section 4. Emergency Situations. (1) Emergency situations shall be reported immediately to the director by the custodian of the *nature* preserve.

(2) Emergency situations that require immediate action to prevent injury to persons or damage to property, as determined by the director or the commission, shall be handled in such a manner as to cause minimal damage to natural conditions.

Section 5. Access Lanes. Vehicular access lanes shall be installed and maintained within a nature preserve only where essential for patrol, fire control, or other management or research activities and shall be in accordance with plans approved by the commission. Such lanes shall be closed to all except service vehicles. They shall provide a single track, and clearing shall not extend more than seven (7) feet on each side of the center of the lane. Service vehicles only shall be used on such designated access lanes except in emergency situations.

Section 6. *Fire Control. (1)* [Firebreaks.] When boundary firebreaks are needed, they shall be constructed in a buffer area outside the *nature* preserve if possible. Firebreaks within a *nature* preserve shall be kept to a minimum and shall be constructed only in accordance with plans approved by the commission. Temporary firebreaks, made by mowing, raking, or wetting, may be used in conjunction with a managed burn.

(2) All wildfires shall be brought under control as quickly as possible. After a fire within a nature preserve, there shall be no cleanup, fire hazard reduction, or replanting except with the approval of the commission. Approval shall be based upon health and safety considerations, or the need for restoration.

(3) Prescribed burning may be undertaken as approved by the commission. A written plan shall be prepared for each prescribed burn. Approval may be given if the prescribed burning plan is in compliance with this section. Fire shall be kept away from fences and other structures that may be damaged. Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan. No firefighting chemicals that are known to cause damage to or alteration of natural conditions shall be used. Use of equipment and vehicles shall be specified in the prescribed burn plan. No equipment or vehciels that would cause damage or alteration to the natural features of the nature preserve shall be used.

Section 7. Trails. (1) A trail system shall conform to the objectives of the nature preserve. Trails shall be designed so as to affect only part of the *nature* preserve and to have minimal impact on natural features. Trails shall be designed to have no significant impact on *species of animals or plants monitored by the commission* [endangered or threatened species or fragile or limited natural communities or features].

(2) Location and form of any trails other than natural wildlife paths shall be approved by the commission. Trails shall be adequate to provide for permitted use of a *nature* preserve and to prevent erosion, trampling of vegetation, and other deterioration, but otherwise shall be kept to a minimum. Use of paving materials, footbridges, and elevated walks is permissible when provided for in the trail plan approved by the commission. Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the *nature* preserve may be used in trail construction only as specified by the commission.

(3) No species *of animals or plants monitored by the commission* [listed as endangered, threatened, or special concern] shall be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements. Necessary signs, information booths, trash receptacles, and minor structures required to house research instruments or hand tools are permitted *within nature preserves* if specifically approved by the commission or by permission of the commission for research activities. All other structures and service facilities shall be located in service [or buffer] areas. Signs and structures shall be *approved* [specified] by the commission.

Section 9. Service Areas. Service areas may be established within *nature preserves* [buffer areas] to provide access and parking, management facilities, and visitor facilities. Provision for necessary service areas may be included in the articles of dedication or as approved on a case specific basis by the commission.

Section 10. Scenic and Landscape Management. *(1)* No measures shall be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a *nature* preserve. There shall be no cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting, except as approved by the commission.

(2) [Section 11. Elimination of Safety Hazards. (1)] Installation of guard rails, fences, steps, and other devices necessary for visitor safety may be approved by the commission. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled *or cleared.*

(3) [Section 12. Removal or Introduction of Objects. (1)] Except as provided in the articles of dedication or as approved by the commission, there shall be no removal or consumptive use of any material, product, or object from a nature preserve and there shall be no introduction of any material, product, or object to a nature preserve. Prohibited activities include, but are not limited to, grazing by domestic animals; farming; gathering of firewood or other plant products; mining or quarrying; and dumping, burying or spreading of garbage, trash or other materials.

(4) [(2)] As approved by the commission, artifacts may be removed or demolished as follows:

(a) Old interior fences may be removed, giving consideration to leaving posts to mark boundaries between former land uses;

(b) Rubbish may be removed; and

(c) Structures having no utilitarian, historical, scientific, or habitat value may be demolished or removed.

[(3) Scientific specimens and materials may be collected and removed as determined by the commission.]

[(4) Hunting, fishing, and trapping shall not be allowed unless provided for in the articles of dedication for the preserve, approved by the commission. Additional rules, regulations, or restrictions may be adopted by the commission on a preserve basis to ensure that the preserve is protected adequately from an inappropriate overbalance of game species.]

Section *11.* [13.] Water Level Control. Natural water levels shall not be altered. Water levels which have been altered by man may be changed if identified as being essential for the maintenance and restoration of natural conditions.

[Section 14. Fire Control. (1) All wildfires shall be brought under control as quickly as possible. After a fire within a nature preserve, there shall be no cleanup, fire hazard reduction, or replanting except with the approval of the commission. Approval shall be based upon health and safety considerations, or the need for restoration.]

[(2) Prescribed burning may be undertaken as approved by the commission. A written plan shall be prepared for each prescribed burn. Approval may be given if the prescribed burning plan is in compliance with this section. Fire shall be kept away from fences and other structures that may be damaged. Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan. No chemicals that are known to cause damage to or alteration of natural conditions shall be used. Use of equipment and vehicles shall be specified in the prescribed burn plan. No equipment or vehicles that would cause damage or alteration to the natural features of the preserve shall be used.]

Section *12.* [15.] Erosion Control. Erosion and soil deposition due to past or present disturbance by man or natural conditions within or outside of *a nature* preserve may be controlled as approved by the commission.

Section *13.* [16.] Management of *Animals and Plants* [Vegetation and Wildlife]. (1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of *a species of animals or plants monitored by the commission* [an endangered species of native flora or fauna] is designated an objective of the nature preserve by the commission.

(b) Plant succession control measures may be undertaken in such a manner as approved by the commission.

(c) Vegetation may be managed within the following limitations:

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, or basal or spot foliar application of specified herbicide;

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified;

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, or basal application of specified herbicide.

(d) The use of herbicides may be specified by the commission.

(2) Control of noxious species.

(a) Species of plants and animals which are noxious in fact shall be controlled only if they are determined by the commission to be jeopardizing the natural integrity of the *nature* preserve.

(b) Except for removal from trails, access lanes, and firebreaks as approved by the commission, there shall be no control of native plants which are not noxious but may otherwise appear undesirable.

(c) There shall be no control of predators, rodents, insects, snakes, or other animals except as approved by the commission, even though they may appear harmful or undesirable.

(d) There shall be no use of pesticides except as approved by the commission.

(3) Control of exotic species.

(a) Control of exotic plants and animals may be undertaken in a manner approved by the commission. There may be no attempt to eradicate exotic species that have become a stable part of the biotic community unless this can be accomplished without disturbance of natural conditions.

(b) Control of exotic plants may be undertaken by control of plant succession as provided in this regulation or by management practices allowed in this regulati[illegible]

(4) Any measures for population control of any species to be applied must be provided for in a written plan approved by the commission. Except as provided in the articles of dedication or approved by the commission, control measures shall be undertaken only by the commission staff or others approved by the commission.

(5) Management of *species of plants and animals monitored by the commission* [endangered, threatened, and special concern species,] and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the commission. Approval shall be based upon a finding by the commission that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve and other relevant information.

(b) Control of plant succession in favor of particular species shall be as provided in this regulation.

(6) Introduction of plants and animals. No plants or animals or their reproductive bodies shall be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the commission.

Section *14.* [17.] Use Tolerance. Human use of *a nature* perserve shall be allowed only to such extent and in such manner as will not impair natural conditions. The articles of dedication may specify the controls and restrictions to be placed on access and use. The commission as owner, or the landowner and the commission upon agreement, may further restrict access and use as necessary to protect the *nature* preserve.

Section *15.* [18.] Character of Visitor Activity. (1) Visitor activity shall be regulated to prevent disturbance of a *nature* preserve beyond what it can tolerate without permanent deterioration. Visitors without permits for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. Persons wishing to traverse a nature preserve elsewhere than on trails or other areas open to visitation shall obtain permission from the commission.

(2) Public use shall be in accordance with the articles of dedication of the preserve, and such rules as may be approved by the commission for a nature preserve.

(3) Hunting, fishing, and trapping shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to restrictions approved by the commission. Additional rules, regulations, or restrictions may be adopted by the commission on a preserve basis to ensure that the preserve is protected adequately from an inappropriate overbalance of game species or impending disease problems of game or nongame species.

(4) Visitors shall not bring pets into a nature preserve, except as allowed pursuant to permission to hunt in a nature preserve.

(5) Deadly weapons shall not be carried by visitors to a nature preserve except as allowed pursuant to permission to hunt in a nature preserve.

Section *16.* [19.] Access Control. (1) Ingress and egress shall be allowed only at such locations and under such conditions as may be specified by the commission.

(2) The owner, custodian, and commission have the authority to further limit access [to the preserve] as may be necessary for protection and proper management of the *nature* preserve.

Section *17.* [20.] Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication, and as approved by the commission. Interpretive signs, structures or labels shall *be approved by the commission* [conform to this regulation].

Section *18.* [21.] Permission for Research or Educational Acitivites. (1) A person wishing to engage in research or educational activities on a nature preserve not otherwise permitted by these rules or by the articles of dedication for the *nature* preserve shall secure permission of the commission. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group.

(2) Permission is required for educational use of a preserve only if activities are to include collecting or activities other than walking and observation.

(3) The application for permission shall be on a form prescribed by the commission. It shall include the name, address, position, professional qualifications, and general field of interest of the applicant and a description of the proposed activities including the objective, methods and procedures to be followed, records to be kept, duration of the project areas to be visited, frequency and length of visits, and detailed description of disturbances to be made. If collecting is to be done it shall be in accordance with this regulation. Information shall be provided on the species or objects to be taken, number of specimens, method of taking, and disposition of specimens. The commission shall provide permission application forms to persons requesting them.

(4) The permission may contain specific provisions and restrictions. Permission may be modified, suspended, or revoked by the commission for violations of the conditions of permission, this section, or based upon a determination of the commission that the activity jeopardizes the nature preserve. Each holder of permission shall submit to the commission an annual report in such form as may be prescribed by the commission. Permission for an activity of no more than the calendar year expires on December 31 of that year. Permission for an activity of longer than one (1) year may be extended annually upon submission of an annual report.

Section *19.* [22.] Collecting on Nature Preserves. (1) Persons wishing to collect scientific specimens for deposition in a permanent institutional collection available to the public or for purposes of an approved research project may do so pursuant to terms of permission as specified in this regulation.

(2) Permission may restrict the collecting of certain species or specimens. There shall be no collecting of material for classroom or laboratory observation and study or mass collecting by class groups. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth by the commission.

Section *20.* [23.] Record. A record shall be kept for each nature preserve. One (1) copy shall be held by the commission at its Frankfort office. The record shall include annual reports of the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events. Responsibility for assembling the record shall be with the commission director, in conjunction with the custodian of the *nature* preserve.

JON E. RICKERT, Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 2:30 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Kentucky Nature Preserves Commission
Amended After Hearing

400 KAR 2:050. Hearings and appeals.

RELATES TO: KRS 146.465, 146.480, 146.495, KRS Chapter 424

PURSUANT TO: KRS 146.475, 146.485, 146.530

NECESSITY AND FUNCTION: KRS 146.475 and 146.485 require the commission to establish rules for the protection of nature preserves. KRS 146.530 requires the commission to establish a procedure whereby orders and final determinations of the commission may be appealed administratively. This regulation sets forth the procedure to be followed by the commission in conducting hearings on issues related to nature preserves.

Section 1. Applicability. This regulation shall apply to hearings conducted by the commission including the following purposes: (1) Determining whether there exists an imperative and unavoidable public necessity that justifies the taking of a nature preserve, or any part thereof, by another public body, or disposition of a *nature* preserve or any part thereof by the commission.

(2) Determining whether proposed amendments to the articles of dedication of a *nature* preserve will not permit an impairment, disturbance, use or development of the *nature* preserve that is inconsistent with the articles of dedication or the Act.

(3) Determining whether *differences exist* [there exists differences] in the characteristics and conditions of a proposed nature preserve, or other reasons, that justify making an exception in the articles of dedication to the requirements of these regulations.

(4) Determining the custodian of a nature preserve when the nature preserve is owned by the commission in fee simple.

Section 2. Notice of hearings. Notice of hearing shall be given in accordance with KRS Chapter 424. (1) The notice shall:

(a) State the time, place, and purpose of the hearing;

(b) Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing; or

(c) Be published in the county, or counties, in which the nature preserve is located, and for the state at large.

(2) The notice may:

(a) Be published more than once as directed by the commission;

(b) Set forth the address to which written comments on the purpose of the hearing may be submitted, and the date by which those written comments shall be submitted.

Section 3. Hearings. (1) The hearing shall be conducted in the following manner:

(a) The hearing shall be held at a time and place to be set by the commission and may be held in conjunction with a regular meeting of the commission.

(b) Any interested person may appear at the hearing and make an oral or written presentation regarding the purpose of the hearing. The commission may regulate the length, order, and excessive repetition of oral presentations.

(c) The director may make a presentation and recommendation for action to the commission at the hearing.

(d) The commission shall consider all written and oral presentations in making its determination.

(e) The commission, through the chairman, shall issue a final determination within sixty (60) days of the hearing. The determination shall set forth the findings of the commission in reaching its determination.

(2) (a) The final determination of the commission shall be submitted to the secretary of the cabinet for the secretary's approval within five (5) days of its issuance.

(b) Copies of the final determination shall be sent to any person who made a written or oral presentation to the commission and any other person who makes a request in writing to the commission for a copy.

Section 4. Appeals. (1) Any final determination of the commission may be appealed to the secretary of the cabinet.

(2) The appeal shall be taken by filing with the secretary of the cabinet exceptions to the final determination of the commission [with the secretary of the cabinet] within fifteen (15) days of its issuance. The exceptions shall state specifically the grounds relied upon by the appellant.

(3) The secretary shall approve the final determination of the commission unless, based upon the findings set forth in the final determination or any exceptions thereto, the secretary finds:

(a) There is no imperative and unavoidable public necessity due to the existence of a viable alternative to the proposed granting or disposition of a nature preserve or any part thereof;

(b) The determination of the commission is inconsistent with the articles of dedication or the Act; or

(c) The commission acted without or in excess of its power.

(2) The secretary shall, within forty-five (45) days, approve the final determination of the commission, or notify the commission in writing of the secretary's refusal to approve the final determination and set forth the reasons therefor. Failure of the secretary to so act shall constitute approval of the commission's action.

(3) Notice of the secretary's approval or disapproval shall be sent to all persons as provided for in Section 3(2) of this regulation.

JON E. RICKERT, Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 2:30 p.m.

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

401 KAR 4:200. Documents and procedures incorporated by reference for the administration of the regulatory provisions of Kentucky's water resources law.

RELATES TO: KRS 151.125, 151.140, 151.150, 151.160, 151.182, 151.184, 151.200, 151.230, 151.240, 151.250, 151.260, 151.280, 151.293, 151.295, 151.297, 151.310

PURSUANT TO: KRS 151.125

NECESSITY AND FUNCTION: KRS 13A.120 prohibits an administrative body from issuing standards or by any other name a document where an administrative regulation is required or authorized by law. KRS 13A.130 prohibits an administrative body from using a policy, memorandum, or other form of action to modify or expand a statute or administrative regulation, or to expand or limit a right guaranteed by the Constitution of the

United States, the Constitution of Kentucky, a statute, or an administrative regulation. This regulation provides for the incorporation by reference allowed under 1 KAR 1:010 of the documents needed by the Natural Resources and Environmental Protection Cabinet to implement 401 KAR Chapter 4, Water Resources. *Copies of these documents may be obtained or examined at the Division of Water Frankfort Office.*

Section 1. Stream Construction Permits. The following documents and policy are incorporated by reference for the purpose of determining whether to issue or deny permits for any construction or reconstruction in or along a stream pursuant to KRS 151.250:

(1) Documents.

(a) National Engineering Handbook, Section 4, Hydrology; Soil Conservation Service; August, 1972.

(b) HEC-2 Water Surface Profiles (Computer Program); U.S. Army Corps of Engineers; September, 1982.

(c) Federal Emergency Management Agency, National Flood Insurance Program, Part 59--General Provisions; FEMA; May 31, 1979.

(d) Kentucky Model Flood Damage Prevention Ordinance; Booker Associates, Inc.; August, 1983.

(e) Technique for Estimating Magnitude and Frequency of Floods in Kentucky; U.S. Geological Survey, Water-Resources Investigations 76-62; November, 1976.

(f) Drainage Areas of Streams at Selected Locations in Kentucky; U.S. Geological Survey, Open-File Report 81-61; January, 1981.

(g) TP-149, A Method for Estimating Volume and Rate of Runoff in Small Watersheds; Soil Conservation Service; April, 1973 Revised.

(h) Floodway, Flood Boundary and Floodway Maps; Flood Insurance Rate Maps; Flood Hazard Boundary Maps; Federal Emergency Management Agency; (Dates Vary).

(i) Executive Order 77-927, National Flood Insurance Program; Signed by Governor Julian Carroll, September 30, 1977.

(2) Policy. Division of Water policy document DOW 84-01 is hereby incorporated by reference.

Section 2. Dam Construction Permits. The following documents are incorporated by reference for the purpose of determining whether to issue or deny permits to construct, reconstruct, modify, or remove any dam on appurtenance thereto:

(1) Documents.

(a) Drainage Manual; Commonwealth of Kentucky, Dept. of Transportation; 1983 (Revised); Page 400.

(b) DAMS 2, Structure Site Analysis Computer Program; Soil Conservation Service; October, 1982 (Draft).

(c) HEC-1, Flood Hydrograph Package (Computer Program); U.S. Army Corps of Engineers; September, 1981.

(d) HEC-2, Water Surface Profiles (Computer Program); U.S. Army Corps of Engineers; September, 1982.

(e) Guidelines for the Geotechnical Investigation and Analysis of Existing Earth Dam; Division of Water; June, 1980.

(f) General Discussion of Dam Breach Analysis; Division of Water; August, 1979.

(g) TR-20, Computer Program for Project Formulation Hydrology, Soil Conservation Service; May, 1983 (Draft of Second Edition).

(h) ICES LEASE-1, Slope Stability Analysis (For Computer); Bailey and Christian, Massachusetts Institute of Technology; April, 1969.

(i) REAME, Computerized Slope Stability Analysis; Y. H. Huane, Institute for Mining and Minerals Research; February, 1983.

(j) SWASE, Computerized Slope Stability Analysis; Y. H. Huang, Institute for Mining and Minerals Research; 1983.

(k) NWS Dam—Break Flood Forecasting Model (Computer Program); Dr. D. L. Fread, National Weather Service; July 18, 1983.

(2) Policy. (Reserved).

Section 3. Water Withdrawal Permitting. The following documents *included by reference* and policies are [included by reference] for the purpose of determining whether to approve or deny permits to withdraw water pursuant to KRS 151.150:

(1) Documents.

(a) Flow Duration at Selected Stream-Sites in Kentucky (USGS Open File Report 80-1221).

(b) Drainage Areas of Streams at Selected Sites in Kentucky (USGS Open File Report 81-61).

(c) USGS Streamflow/Basin Characteristics (unpublished).

(2) Policy.

(a) For the purpose of evaluating withdrawals from streams, the seven (7) day, ten (10) year low flow will be maintained in order to ensure proper water quality and provide for aquatic life needs.

(b) In evaluating applications for groundwater withdrawals, the cabinet will allow the withdrawal of reasonable amounts without requiring submission of extensive data and analysis. However, if the cabinet has reason to believe that groundwater withdrawals will be of such location or extent that existing uses will be impaired, the cabinet shall require detailed analysis of the proposed withdrawal's effects. If a permitted groundwater withdrawal adversely effects previously permitted groundwater users or domestic water supplies, the withdrawal shall be reduced to a rate that no longer causes adverse effects or all affected users shall be provided with sufficient water to meet their needs.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

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

401 KAR 5:200. Documents incorporated by reference for water quality and wastewater treatment.

RELATES TO: KRS 224.011, 224.020, 224.033, 224.034, 224.060, 224.073, 224.075, 224.081, 224.083, 224.110, 224.135, 224.140

PURSUANT TO: KRS 224.033, 224.045

NECESSITY AND FUNCTION: KRS 13A.120 prohibits an administrative body from issuing standards or by any other name a document where an administrative regulation is required or authorized by law. KRS 13A.130 prohibits an administrative body from using a policy, memorandum, or other form of action to modify or expand a statute or administrative regulation, or to expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation. This regulation provides for

the incorporation by reference allowed under 1 KAR 1:010 of the documents used by the Natural Resources and Environmental Protection Cabinet to implement 401 KAR Chapter 5, Water Quality. *Copies of these documents may be obtained or examined at the Division of Water Frankfort Office.*

Section 1. Operating and Construction Permits for Wastewater Treatment Facilities. (1) The following documents, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) U.S. Environmental Protection Agency, Guidance Manual for POTW Pretreatment, U.S. Environmental Protection Agency, Washington, D.C., October, 1983.

(b) U.S. Department of the Army, Corps of Engineers, Office of the Chief of Engineers, Dredging and Dredged Material Disposal, Department of the Army, Washington, D.C., March, 1983.

(c) Great Lakes Board of Sanitary Engineers, Recommended Standards for Sewage Works, Health Education Service, Inc., Albany, N.Y., 1978.

(d) U.S. Environmental Protection Agency, Title 40 Code of Federal Regulations (CFR) Parts 4, 6, 7, 8, 12, 15, 16, 25, 29, 30, 32, 33, and 35, U.S. Government Printing Office, Washington, D.C., 1983 Edition and Annual Reprints thereafter.

(e) U.S. Environmental Protection Agency, Title 48 Code of Federal Regulations (CFR) Part 15, U.S. Government Printing Office, Washington, D.C., 1983 Edition and Annual Reprints thereafter.

[(f) U.S. Environmental Protection Agency, Criteria Documents for Toxic Pollutants listed in Volume 45 of Federal Register, page 79318, U.S. Environmental Protection Agency, Washington, D.C., November, 1980.]

[(g) U.S. Environmental Protection Agency, Quality Criteria for Waters, U.S. Environmental Protection Agency, Washington, D.C., 1976.]

(2) The following policy statements, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference: Kentucky Division of Water; Five Mile Policy Requiring No Wastewater Discharges Within Five Miles of Water Intake; Division of Water, Frankfort, Kentucky; no date.

(3) Documents cited in this section. Subsection (1)(f) and (g) of this section are for reference purposes only. Incorporation of these documents by reference does not constitute adoption by the state of U.S. Environmental Protection Agency numerical criteria for these pollutants. The use of these documents is site specific depending on stream quality and characteristics, and observed biological communities.

Section 2. Compliance With and Enforcement of State Water Laws and Regulations. (1) The following documents, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference: (Reserved).

(2) The following policy statements, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference.

(a) Kentucky Division of Water, Enforcement Management System, Division of Water, Frankfort, Kentucky, April, 1983.

(b) Kentucky Division of Water, Policy Memorandum—Notice of Violation, Division of Water, Frankfort, Kentucky, November, 1983.

(c) Kentucky Division of Water, State Municipal Strategy, Division of Water, Frankfort, Kentucky, April, 1984.

Section 3. Wastewater Operator Certification. (1) The following documents, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) Oerther, Robert; Process Control Manual, Finance Printing Press, Frankfort, Kentucky, 1981.

(b) Water Pollution Control Federation, Operation of Wastewater Treatment Plants MOP 11, Water Pollution Control Federation, Washington, D.C., 1976.

(c) New York State Department of Environmental Conservation, Manual of Instruction for Wastewater Treatment, Health Education Service, Inc., Albany, N.Y., 1978.

(2) The following policy statements, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference: (Reserved).

Section 4. Water Quality Standards and Use Designation Determinations. (1) The following documents, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) Kentucky Division of Water—Division of Environmental Services, Stream Use Designation Methods Manual, Division of Water, Frankfort, Kentucky, 1984.

(b) U.S. Environmental Protection Agency, Water Quality Standards Handbook, U.S. Environemental Protection Agency, Washington, D.C., 1983.

(c) U.S. Environmental Protection Agency, Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analysis, U.S. Environmental Protection Agency; Washington, D.C., 1983.

(d) Kentucky Division of Water; Wasteload Allocation Modeling Methodology, Division of Water, Frankfort, Kentucky, 1983.

(2) The following policy statements, which are in effect at the time of the effective date of this regulation, are incorporated herein by reference: (Reserved).

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

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

401 KAR 6:200. Documents incorporated by reference, relative to public and semi-public water supplies and swimming pools.

RELATES TO: KRS 223.170, 223.180, 223.190, 223.210, 224.032

PURSUANT TO: KRS 223.200, 224.032

NECESSITY AND FUNCTION: KRS 13A.120 prohibits an administrative body from issuing standards or by any other name a document where an administrative regulation is required or authorized by law. KRS 13A.130 prohibits an administrative body from using a policy, memorandum, or other form of action to modify or expand a statute or administrative regulation, or to expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation. This regulation provides for the incorporation by reference allowed under 1 KAR 1:010 of the documents used by the Natural Resources and En-

vironmental Protection Cabinet to implement 401 KAR Chapter 6, Sanitary Engineering. *Copies of these documents may be obtained or examined at the Division of Water Frankfort Office.*

Section 1. Plan Review (1) Documents.
(a) Health Education Service, Inc., Recommended Standards for Water Works: A Report of the Committee of the Great Lakes—Upper Mississippi River Board of State Sanitary Engineers, Health Education Service, Inc., 1976.
(b) Health Education Service, Inc., Manual of Individual Water Supply Systems, EPA-430/9-74-007, U.S. Government Printing Office, Washington, D.C., 1975.
(c) Bellack, Erwin, Fluoridation Engineering Manual, U.S. EPA, Water Supply Division, Washington 20460, 1972.
(d) National Sanitation Foundation, Annual Listing: Swimming Pool Equipment, National Sanitation Foundation, Ann Arbor, 1984.
(2) Policy.
(a) Kentucky Division of Water, General Design Criteria for Surface and Ground Water Supplies, 1984.
(b) Kentucky Division of Water, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or from the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges, 1983.

Section 2. Compliance. (1) Documents.
(a) APHA-AWWA-WPCF, Standard Methods 15th Edition American Public Health Association, Washington, D.C., 1980.
(b) U.S. Environmental Protection Agency, Handbook for Analytical Quality Control in Water and Wastewater Laboratories, EPA 600/4-79-019, U.S. EPA, Washington, D.C., 1979.
(c) U.S. Environmental Protection Agency, Handbook for Evaluating Water Bacteriological Laboratories, EPA-670/9-75-006, Washington, D.C.
(d) U.S. Environmental Protection Agency, Manual for the Interim Certification of Laboratories Involved in Analyzing Public Drinking Water Supplies—Criteria and Procedures, EPA-600/8-78-008, Washington, D.C., May 1978.
(e) U.S. Environmental Protection Agency, Microbological Methods for Monitoring the Environment, EPA-600/8-78-017, Washington, D.C., 1978.
(2) Policy. Kentucky Division of Water, Policy Memorandum Compliance Procedures for Public and Semi-public Water Supplies, January, 1984.

Section 3. Operator Training and Certification. Documents. (1) New York State Department of Health, Manual of Instruction for Water Treatment Plant Operators, Health Education Service, Albany.
(2) Kentucky Division of Water, Training Manuals for Large Water Plant Operators, Finance Printing Press, Frankfort, 1984.
(3) Kentucky Division of Water, Training Manual for Small Water Plant Operators, Finance Printing Press, Frankfort, 1984.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

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

401 KAR 30:070. Reference documents.

RELATES TO: KRS 13A.130, 13A.190, 224.005, 224.033, 224.830 through 224.889, 224.994
PURSUANT TO: KRS 13A.210, 224.033
NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to promulgate regulations for the management of solid and hazardous wastes. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 30 through 49. This regulation incorporates by reference as provided under 1 KAR 1:010 essential documents used in connection with the waste management regulations.

Section 1. Documents Incorporated by Reference. The documents listed in subsections (1) and (2) of this section are adopted and filed herein by reference. Copies of these documents may be obtained from the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.
(1) "Guidelines for Landspreading of Solid Waste," (1982).
(2) Waste Management Policy Number:
[(a) I.1.a., "Hazardous Waste Permitting-Compliance with Local Veto," (May 17, 1983).]
[(b) I.1.e., "Delisting," (April 6, 1984).]
(a) [(c)] I.2.a., "Closure of Permitted Solid Waste Sites," (July 29, 1983).
(b) [(d)] IV.1.a., "Sampling Procedure-Splitting Samples," (September 15, 1983).
(c) [(e)] VI.1.a., "Definition of Waste-Fuel Exemption," (October 26, 1983).
(d) [(f)] VI.1.b., "Regulatory Interpretation: Sham Recycling," (April 6, 1984).
(e) [(g)] VI.1.c., "Regulatory Interpretation: Mixture of "F" Listed Solvents," (April 6, 1984).
(f) [(h)] VI.1.c., "Regulatory Interpretation: EPA Guidance on K061 Listing," (April 6, 1984).
(g) [(i)] VI.1.e., "Regulatory Interpretation: Plating Waste Generators," (April 6, 1984).
(h) [(j)] VI.1.f. *(AMENDMENT)*, "Regulatory Interpretation: Empty Containers," (*July 9* [April 6], 1984).

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

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

401 KAR 50:016. Policies incorporated by reference.

RELATES TO: KRS 13A.130, 224.320, 224.330, 224.340
PURSUANT TO: KRS 13A.219, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection

Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of the policies that are used by the Division of Air Pollution.

Section 1. (1) The following document from the Kentucky Division of Air Pollution is incorporated herein by reference: "Policies of the Division of Air Pollution," *July 13,* [May,] 1984.

(2) Copies may be obtained from: Division of Air Pollution, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

(3) This document contains the policies that are used by the Division of Air Pollution. Topics covered in each chapter are:

(a) Ambient air monitoring for prevention of significant deterioration (PSD), post construction and compliance. When ambient monitoring is required for PSD under 401 KAR 51:017, this chapter contains specific guidance for a quality control program for automated analyzers, manual methods, gaseous standards and flow measurement devices; ambient monitoring guidelines for PSD including rationale, objectives, data representation and uses; and duration of monitoring, sampling methods and procedures, frequency of sampling, monitoring plan, meteorological parameters and measurement methods, network design and probe siting criteria, number and location of monitors for criteria and noncriteria pollutants, and quality assurance requirements.

(b) Interpretation of the PSD regulation, 401 KAR 51:017. This chapter contains the interpretation of significant contribution, best available control technology information for coal-fired power plants; and federal determinations of the applicability of the federal PSD regulation, in cases where the regulation is not specific, for use by the Division of Air Pollution in interpreting the applicability of 401 KAR 51:017. This chapter also contains the federal interpretation of applicability PSD regulation relative to start-up after temporary shut-down of affected facilities; a list of compounds which are not considered volatile organic compounds for the purpose of PSD; PSD baseline and netting determinations; and categorization of certain industries applicable to the PSD regulation. This chapter also contains guidelines for determining best available control techniology.

(c) Volatile organic compounds (VOC) emissions. This chapter contains the interpretation of the VOC regulations relative to averaging time, compliance with emission limits, application of diluents and sealants, determination of transfer efficiencies of surface coatings, determination of capture efficiency and equivalency calculations, and EPA's policy on Kentucky's accommodative state implementation plan.

(d) New source performance standards (NSPS) applicability determination. This chapter is used by the Division of Air Pollution to determine applicability of the NSPS regulations of Title 401, Chapter 59 in the issuance of construction and operating permits. It also includes an EPA document which the Division of Air Pollution shall use in interpreting 401 KAR 59:005, Section 2(1), and guidance on performance testing during soot-blowing at new and existing sources which will be used by the Division of Air Pollution in interpreting 401 KAR 50:045.

(e) Application of proper permit fee base. This chapter contains an interpretation of 401 KAR 50:036 as to the applicability to: renewal of permits; bubble, banking and trading transaction applications; sources subject to categorical compliance schedules; modified sources; and reactivated permit applications.

(f) Non-attainment areas. This chapter contains EPA's interpretation of the applicability of 40 CFR 52.24 relative to net increases, and the definition of potential to emit and will be used by the Division of Air Pollution in interpreting 401 KAR 51:052.

(g) Appicability of emissions offset. This chapter contains a summary of federal emission offset determinations which the Division of Air Pollution applies in determining the applicability of 401 KAR 51:052.

(h) Requirements for contents of source testing reports. This chapter outlines the contents of a source test protocol and the minimum requirements for the contents of an acceptable compliance test report as required by 401 KAR 50:045.

[Section 2. The provisions of this regulation shall supersede any conflicting provisions of any regulation promulgated prior to the effective date of this regulation.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
Amended After Hearing

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190

PURSUANT TO: KRS [13.082,] 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160

NECESSITY AND FUNCTION: KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth. KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. [Effective July 15, 1982, and thereafter,] The subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I--Social Studies K-12; Group II--Language Arts K-12 (except Reading K-8 and Literature K-12); Group III--Science K-12; Group IV--Mathematics K-12; Group V--Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, *(except Introduction to Computers 9-11, Data Processing I 11-12, Data Processing II 12, Word Processing I 11-12, and Word Processing II 12),* Vocational Education 7-12, *(except Air Conditioning 10-12, Auto Body Repair 10-12, Auto Mechanics 10-12, Electricity 10-12, Electronics 10-12, Machine Shop 10-12, and Radio/TV Repair 10-12),* and Trades and Industry 11-12; and Group VI--Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, *and* Health and Physical Education K-12.

Section 2. (1) The Division of [Free] Textbook Services shall requisition and publishers submitting bids shall ship

adequate textbook samples to the Division of [Free] Textbook Services and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available textbook samples, program descriptions, list of gratis items for districts adopting or purchasing books, and other pertinent information shall be provided before the bid opening. Samples and information not available at bid opening shall be shipped to the Division of [Free] Textbook Services, commission members, reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board of Education. All sales and transfers shall be properly receipted and filed in the Division of [Free] Textbook Services. Official adoption samples, however, must be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but must clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook in question;

(c) Sections of the textbook being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and/or action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members and local district selection committee gifts, trips, or entertainment[, or any monetary value] to assure the listing, ad chase of their textbooks. If there is suffici publishers are guilty of any of the afore shall be called before the State Textbook determine if violations did occur and what should be taken.

(2) Publishers proposing to give local d charge items, including but not limited to k masters, workbooks, and extra textbooks, would adopt and purchase their textbooks, of gratis items as an official part of their bi not complying would be considered in violat and this regulation.]

(3) In addition to textbook sampling re KRS 156.440, publishers may sample gratis districts for use in the adoption process. Gra shall be minimal and not be done in a manner adoption and purchase of a publisher's textboo

(4) [(3)] The State Textbook Commission sh right to refuse to execute or to cancel a publis upon discovery that said publisher has violated this regulation or does not have the ability to the terms and conditions of the contract.

(5) [(4)] All bidders for textbook contracts sha the Division of [Free] Textbook Services the Kentucky person, firm, or corporation upon who may be served. The name of the process agent, with such other information concerning said agen made available to the proper authorities for the pu serving process.

Section 5. Publishers and local school distri agree to pilot new textbook programs for one (1 year on a selective and controlled basis to determin fectiveness of a particular textbook program. Piloti not be conducted during the adoption year (July-Ap a subject being considered for adoption by the districts. The Superintendent of Public Instructio approve all piloting programs. The request need no any prescribed form but shall clearly state:

(1) The publisher that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot w conducted;

(4) The schools where the pilot will be conducted;

(5) The name of the school district staff member su vising the pilot;

(6) Beginning and ending date of pilot;

(7) Brief summary of evaluation procedures.

Section 6. Any school administrator or teacher t receives directly or indirectly any gift, reward, or prom of a reward for his influence in reviewing and selecting te tbooks shall be subject to the penalties of KRS 156.480.

Section 7. (1) The "Manufacturing Standards an Specifications for Textbooks," developed and approve by the National Association of State Textbook Ad ministrators, in consultation with the Association o American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. Said edition is incorporated by reference and is on file in and can be obtained from the Division of [Free] Textbook Services.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit

galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 8. Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year of use shall be replaced by the publisher on a one-for-one basis. After the first two (2) years of use, replacement agreement must be reached with the publishers. School districts shall start the replacement process as soon as it has been determine that textbooks are defective.

Section 9. (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample textbook and a summary description of the revised edition that compares it with the textbook and/or program presently on the State Multiple List.

Section 10. (1) Multi-volume textbook programs for a single subject or a series for more than one (1) grade level is defined as two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve (12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section 11. (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky.

(2) The retail price to used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section 12. (1) Local school districts are hereby authorized, *for elementary school use,* to use up to thirty (30) percent of the elementary school textbook funds [and up to thirty (30) percent of the high school textbook funds] for the optional purchase of supplementary textbooks, print and non-print media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase basal textbooks or instructional materials to be used in lieu of a basal textbook for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board of Education annual approval.

Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board of Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials are eligible to be purchased with optional textbook funds:

(a) Pre-printed organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, and similar qualifying materials.

(b) Pre-processed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Pre-printed or pre-processed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials are not eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services, teachers' guides and manuals, testing programs, *library books,* supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, computers, and televisions (including receiving sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Division of [Free] Textbook Services. Annual approval must be obtained before funds are obligated if there is a need to exceed the designated thirty (30) percent option. [Application

to exceed the thirty (30) percent option of elementary (K-8) and secondary (9-12) textbook funds shall be filed on separate forms.] The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Division of [Free] Textbook Services on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" must include a copy of the State Board of Education approval of the program and the instructional materials to be used.

(6) Regulations relating to the purchase of media materials, audio-visual equipment and all other instructional materials and supplies by local school districts shall contain the following requirements:

(a) Items to be purchased should be identified as consumable or non-consumable;

(b) Each local school district shall establish a per pupil allocation of funds to purchase equipment, materials and supplies, and of this allocation a portion shall be for consumable items and the remainder for non-consumable items;

(c) Local school districts may use all or a portion of student fees as part of the per pupil allocation of funds to purchase instructional equipment, materials and supplies;

(d) Each local school district shall survey teachers to determine their needs for instructional equipment, materials, and supplies. The local district board of education shall take into consideration the survey of teacher needs in the purchase of instructional equipment, materials, and supplies; and

(e) A financial report on allocations to and expenditures for instructional equipment, materials and supplies shall be prepared annually by the school district and shall be a public record.

Section 13. (1) The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and/or programs per subject in any one (1) grade in grades kindergarten through eight (8) and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12).

(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks and/or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section 14. (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made on forms supplied to local school districts by the Bureau of Education for Exceptional Children, Department of Education.

(3) Request for large print textbooks and material shall be directed to the Division of Materials and Curriculum.

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Resource Bank Distribution Center when no longer needed.

(5) Large print textbooks and materials purchased by the Division of [Free] Textbooks Services are not charged to the textbook account of the local school district.

Section 15. (1) The Division of [Free] Textbook Services shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing full basal textbook programs during the first year of each adoption and/or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.

(2) When allocating funds for the purchase of textbooks, the Division of [Free] Textbook Services shall use the pupil membership at the close of the first month of the current school year.

(3) A statement [of high school funds and a statement] of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. *The* [Each] statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments *providing funds to purchase books for new pupils.*

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section 16. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12) by renting to pupils all currently adopted, state-provided textbooks purchased prior to July 1, 1984, and purchasing and renting textbooks from each scheduled incoming adoption group beginning in 1984 with Adoption Group IV (Mathematics). This does not prohibit local districts from using local funds to provide a free textbook program.

(2) The Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall establish annually a maximum textbook rental fee based on the cost of the adoption group scheduled for purchase and the cost of replenishments. Beginning with the 1984-85 school year, the maximum rental fee shall be based on four (4) dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed two (2) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) The school district [district's central office] shall requisition textbooks from the State Multiple List for the grades nine (9) through twelve (12) rental program from the Division of Textbook Services. The Division of Textbook Services shall process the requisitions to the different publishers. The textbooks are to be shipped to the local school districts. Publishers shall invoice the local school districts.

(4) Local school districts shall establish and maintain one (1) centralized textbook rental program account subject to audit. All textbook rental monies shall be receipted to pupils and rental monies, requisitions, and payments to publishers shall be processed through the centralized account. [Local school districts shall maintain an exacting accountability system subject to audit. All textbook rental monies shall be receipted to pupils and turned in to the school district's central office. The central office shall establish separate accounting for the textbook program and make payment to publishers for textbooks for grades nine (9) through twelve (12).]

(5) School districts shall purchase a complete basal textbook program for grades nine (9) through twelve (12) the first year of each scheduled adoption for each subject in the adoption group for which basal textbooks are appropriate.

(6) The Division of Textbook Services shall provide local districts with requisition forms, an annual inventory report, and the information necessary for districts to maintain an efficient textbook rental program for grades nine (9) through twelve (12).

(7) All textbook statutes and regulations governing the textbook program for elementary and secondary schools not invalidated by the textbook rental program statutes and regulations shall be applicable to the textbook rental program for grades nine (9) through twelve (12).

Section *17.* [16.] (1) The Division of [Free] Textbook Services shall provide Annual Report and requisition forms to all school districts. These forms shall be prepared in duplicate. The original copy shall be sent to the Division of [Free] Textbook Services and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after March 1 and shall be filed by June 30.

(2) The Division of [Free] Textbook Services, upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Division of [Free] Textbook Services.

(3) All adopted textbooks purchased with state textbook funds shall be purchased through the office of the Division of [Free] Textbook Services.

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Division of [Free] Textbook Services.

(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Division of [Free] Textbook Services. The Division of [Free] Textbook Services may then order payment.

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all *state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12)* [free textbooks] delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 will be furnished upon request in quantities equal to number of teachers or principals.

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 will be furnished upon request in quantities equal to pupil membership.

Section *18.* [17.] The Division of [Free] Textbook Services shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Division of [Free] Textbook Services shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list will request the Division of [Free] Textbook Services to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Division of [Free] Textbook Services the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district will notify the Division of [Free] Textbook Services. The Division of [Free] Textbook Services shall inter-account funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty (50) percent of the wholesale price plus transportation.

Section *19.* [18.] Pupils or parents shall compensate school districts for textbooks lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks.

Section *20.* [19.] (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortage and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Division of [Free] Textbook Services with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Division of [Free] Textbook Services for payment. Such payments shall not be charged to the textbook account of local school districts.

Section *21.* [20.] (1) District superintendents shall make an accurate count of all *state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12)* [free textbooks] under adoption that are suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Division of [Free] Textbook Services shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A

claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) The local superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be paid into the state treasury.

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugene Robinson

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Pupil Personnel Services
Amended After Hearing

703 KAR 2:050. Attendance; resident, non-resident.

RELATES TO: KRS [156.030,] *157.320,* [157.350,] 158.030, 158.240, 159.035, 161.200

PURSUANT TO: KRS *157.320(9), 158.070(4)* [13.082]

NECESSITY AND FUNCTION: *KRS 157.320 defines average daily attendance of pupils for Minimum Foundation purposes; KRS 158.030 defines the minimum age for school attendance; KRS 158.240 and 159.035 defines attendance credit for moral instruction and 4-H activities; and KRS 161.200 requires attendance records to be kept by teachers.* [Regulations are necessary to assure uniformity in recording attendance of all pupils in the schools of Kentucky.]

Section 1. The word "pupil" as the basis for average daily attendance as provided for in Kentucky Revised Statutes and for all other uses in the public school system shall mean all persons who are in attendance at school between the ages of six (6) and twenty-one (21) years. Any pupil who meets requirements of KRS 158.030 for entering school shall be considered six (6) years of age for attendance purposes.

Section 2. The daily attendance of pupils shall be determined by recording their attendance immediately following the opening of school in the morning and immediately following the lunch period in the afternoon. *Pupils shall be present the entire day to receive a full day's attendance credit.* Pupils not present at these sessions shall not be counted in attendance in determining average daily attendance unless:

(1) The pupils are absent as participants in school activities which have been authorized by the local board of education and which are a definite part of the instructional program of the school, or

(2) The pupils are absent as participants in activities which are provided in KRS 158.240 and 159.035. Pupils shall not be counted in attendance when they are absent as spectators at school activities.

Section 3. *(1)* Pupils shall not be counted in attendance unless they are physically present in the school. They shall be counted absent although such absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.

(2) Occasional absences shall be reported in increments of one-half (½) day. Attendance for the majority of the instructional periods shall be required in order to count the one-half (½) day.

(3) Absences on a regular basis for one (1) or more periods for the majority of the days in a school month shall be reported on a period basis. Districts shall not vary the schedule of students during the school month in order to circumvent the intent of this subsection.

Section 4. (1) Pupils enrolled in both a public common school and a non-public school under a dual enrollment plan shall be counted in attendance for ADA purposes for the time they are in attendance at the public school under straight shared-time.

(2) "Straight shared-time" is defined as an arrangement whereby a child regularly or concurrently attends a public common school part time and a non-public school part time pursuing part of his education under the direction and

control of the public common school and the remaining under the direction of the non-public school.

Section 5. Pupils enrolled in a public common school and attend the public common school one-half (½) day and *who* attend the remainder of the school day in a state vocational technical school or an area vocational education center shall be counted in full-time attendance at the public common school.

Section 6. If a local district under the provision of KRS 157.360, enrolls handicapped children in a private school or agency approved by the State Board *of* [for Elementary and Secondary] Education upon the recommendation of the Bureau of Education for Exceptional Children, the private school or agency shall certify the attendance of these children to the Department of Education at the close of the second school month and at the close of the school year. This attendance shall be counted in a public school designated by the local district.

Section 7. No pupil shall be allowed to make up absence for the purpose of counting such make-up activities in computing average daily attendance.

Section 8. A copy of the written agreement local boards of education execute for average daily attendance of non-resident pupils as provided by KRS 157.350(4), and the attendance report for the first two (2) months of the current school year as required by KRS 157.360(3) shall be submitted to the State Department of Education prior to November 10 of each year, on forms furnished by the State Department of Education.

(1) Names of non-resident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement on file in the office of the local board of education and also on the back of the copy of the agreement filed with the State Department of Education.

(2) Changes may be made in the original non-resident pupil agreement, up to the close of the school year, to include only the non-resident pupils enrolling after the close of the second school month. A copy of the amended agreement shall be on file in the office of the local board of education and a copy of the amendment(s) submitted to the State Department of Education along with the local superintendent's annual statistical report, no later than June 30 of the current school year.

(3) In the event local boards of education fail to enter into a written agreement for non-resident pupils as outlined in subsections (1) and (2), Section 8 of this regulation, the local board of education educating the non-resident pupils shall not receive attendance credit for these non-resident pupils.

Section 9. The teacher's register of daily attendance or reasonable facsimile recommended by the Superintendent of Public Instruction and approved by the State Board *of* [for Elementary and Secondary] Education shall be the original source of attendance data for all pupils enrolled in the public elementary and secondary schools of the Commonwealth of Kentucky and shall be maintained in accordance with the instructions which are prepared and distributed by the State Department of Education.

Section 10. If a local board of education elects to follow the provisions of KRS 161.200(2) for keeping and reporting pupil attendance, the board shall submit a written plan to the Superintendent of Public Instruction for approval.

[Section 11. The school days on which schools are dismissed in accordance with State Board for Elementary and Secondary Education regulations shall be counted as school days and the reason for dismissal shall be indicated by writing in the attendance column of the teacher's register of daily attendance or the approved facsimile under the date of the day so dismissed.]

[Section 12. Dates of days excluded from the school month by reason of State Board for Elementary and Secondary Education regulations shall not be entered in the teacher's register of daily attendance or facsimile.]

ALICE McDONALD
Superinetendent of Public Instruction
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Calloway
(1) Type and number of entities affected: 180 school districts
(a) Direct and indirect costs or savings to those affected:N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:N/A
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Proposed amendment will clarify and update the language in the regulation. Proposed change in Section 2 will emphasize that a pupil must be present the entire day to receive attendance credit. Sections 11 and 12 have no meaning in current attendance procedures and should be removed from the regulation.

Tiering:
Was tiering applied? N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Education for Exceptional Children
Amended After Hearing

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 157.200 to *157.290,* [157.285] *157.360*
PURSUANT TO: KRS [13.082,] 156.070, *157.220, 157.221, 157.250, 157.360* [156.160]
NECESSITY AND FUNCTION: *KRS 157.200 to*

157.290 set forth the state statutory framework for special education programs for exceptional children; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. [To promulgate State Board for Elementary and Secondary Education regulations for programs for exceptional children.] This regulation *establishes requirements for special education programs and* is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with Public Law 94-142.

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to *157.290* [157.285] inclusive, and the criteria listed in this chapter.

(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Bureau of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Bureau of Education for Exceptional Children.

(a) In order to receive tentative allotment of minimum foundation classroom units local school districts shall assure that the following criteria are met:

1. Approved teacher;
2. Approved housing;
3. Approved program plan; and
4. Minimum number of children for type of unit requested.

(b) Pursuant to KRS 157.360(6)(c) and (d), local school districts may choose between two (2) options for reimbursement for exceptional child units to provide home or hospital instruction. The two (2) options are as follows:

1. One (1) unit may be allocated for each ten (10) children in average daily attendance for the current school year, as provided by KRS 157.360(6)(c); or

2. The district may provide home or hospital instruction on an hourly basis, as provided by KRS 157.350(6)(d). The hourly reimbursement rate per child for districts utilizing this option shall be calculated as follows:

State Average Teacher's Salary + Current Operating Expense = Hourly

185 day school term X 6 instructional hours + 175 day instructional term X 6 instructional hours = Reimbursement rate

A maximum average of three (3) instructional hours per child per week will be reimbursed. The total reimbursement amount must be spent on teacher salary, travel expenses and teaching supplies for the home/hospital program. A minimum of seventy-five (75) percent of the total reimbursement amount must be allocated for travel expenses and teaching supplies and equipment.

(c) [(b)] Local school districts shall receive final allotment of minimum foundation classroom units provided the above criteria are met and the local school district validates to the State Department of Education that said unit(s) is operating pursuant to criteria listed in this chapter. Validation shall be made by filling out appropriate record(s) as provided by the Bureau of Education for Exceptional Children and shall be made pursuant to established schedules. *Final allotment of funds due each district for reimbursement of home and hospital instruction programs shall not be distributed until all monthly attendance reports due for a given school district are received by the Department of Education.*

(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.

(3) Approved teacher, personnel. Appropriate state certification shall be as required and provided in Title 704, KAR Chapter 20. *Teachers providing instruction to exceptional children in home and hospital programs shall be provided with the skills needed to meet the individual needs as set forth in the individual education program [meet state requirements regarding certification to teach children with such exceptionalities].*

(4) Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom units plans:

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital *instructional* [based] plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The hospital *instructional* [based] plan shall utilize a classroom-based teacher [or] an itinerant teacher, *or a visiting teacher.*

4. A home instruction plan shall be a program which provides educational services to pupils at the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky

attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher *or a visiting teacher.*

(b) Teacher and housing. Each classroom unit plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities and/or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities and/or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program pursuant to 702 KAR 3:120.

(3) A visiting teacher shall be an approved teacher in a home and/or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher will be provided through the funding mechanism set forth in 707 KAR 1:051, Section 1(b).

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Bureau of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Bureau of Education for Exceptional Children. In granting approval the Bureau of Education for Exceptional Children shall assure that approved requests for such plan shall contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(5) Length of school day. The length of school day shall be the same as for non-handicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Bureau of Education for Exceptional Children.

(6) Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 704 KAR 2:020.

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees may be established pursuant to approval by the Bureau of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);

(b) Local school district superintendent or designee (permanent member);

(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);

(d) Involved instructional supervisor depending on the age and level of the child;

(e) The parent(s) of the referred child;

(f) The referred child, where appropriate;

(g) Personnel responsible for providing evaluation information, where appropriate; and

(h) Other persons as requested by any member of the AARC.

(2) The functions of the AARC shall include the following:

(a) Receive referrals of the following nature:

1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in non-public schools, who are thought to need special education and related services.

2. Cases where the school-based admissions and release committee is not able to determine an appropriate educa-

tional placement for a referred pupil and make recommendations as to appropriate educational placement.

3. Cases from school-based admissions and release committee where appropriate services are not available within the school.

(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:

1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:

a. Contact a public agency or approved private agency/organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.

b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, and/or individual or conference calls. Receiving agency means an approved agency/organization which has indicated a willingness to provide the services requested by the local school district.

c. In collaboration with representative(s) of the receiving agency, review and revise, where appropriate, the child's IEP.

d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.

e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.

2. Placement of an exceptional child in a public or private agency:

a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall: Assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.

b. An admissions and release committee of the receiving public agency shall: Conduct meetings for the purposes of reviewing and where appropriate revising the IEP, assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications and/or individual or conference calls.

c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.

d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be: participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and, at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency/organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP; and, agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be: participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to the educational progress in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC): The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine;

1. Continuation of current educational placement;
2. Change in educational placement; or
3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years following an individual evaluation utilized for initial placement purposes, or for re-evaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a re-evaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4), functions of the AARC and SBARC.

(7) Sub-district admissions and release committees: For those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The sub-district ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Sub-district ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish sub-district ARCs shall submit a written request to and receive approval from the Bureau of Education for Exceptional Children prior to implementation of the plan and pursuant to provisions specified by the Bureau of Education for Exceptional Children. The membership and functions of sub-district committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher/parent interviews, work samples, social/developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures: To the maximum extent possible, child evaluation procedures, shall be non-discriminatory in that:

(a) Techniques and/or materials used are non-biased relative to race, culture, socio-economic status or impaired

sensory, manual, or speaking skills, in order to insure that tests results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met, approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;
2. Understand the use of the different evaluation procedures; and
3. Properly administer and interpret the evaluation results.
4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated for the specific purpose for which they are used.

(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.

(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(5) No single evaluation procedure shall be used to determine an appropriate program for a child.

(6) Each child placed in a program for exceptional children shall be re-evaluated every three years or more frequently as warranted.

(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified above in subsection (1) to (5).

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring/evaluation of each exceptional child's individual education program.

(1) Development. The individual education program shall include but not be limited to the following components:

(a) Present level of educational/behavioral performance including a written summary of strengths and weaknesses.

(b) Annual goals based on child's current level of functioning.

(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measureable intermediate steps between the present level of educational/behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.

(d) Specific special education and related services needed to meet the specified goals and objectives.

(e) Extent to which the child will participate in the regular education program.

(f) Projected dates for initiation of specified educational and related services.

(g) Anticipated duration of the specified special education and related services.

(h) Appropriate objective criteria and evaluation procedures; and

(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.

(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.

(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and activities that will assist the child in achieving the specified objectives and goals.

(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.

(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for on-going evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children.

(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.

(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:

(a) Determine placement;

(b) Base placement on the child's IEP;

(c) Determine placement at least annually; and

(d) Make placement consistent with the least restrictive environment concept as required in Section 7.

(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceeding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4).

(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or

school system and may be considered pursuant to the following conditions:

(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.

(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.

(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.

(d) A trial placement shall not serve as a substitution for a more appropriate placement.

(e) The appropriate admissions and release committee shall review the trial placement no later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.

(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.

(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.

(a) Change in placement shall mean, but not be limited to, a change from:

1. Special education and related services to regular education, including regular education with support services;

2. One (1) categorical program to another (e.g., TMH to EMH);

3. Or to a more or less restrictive environment (e.g., special class to resource room).

(b) Any change in placement shall follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement, including the written prior notice requirements as specified in 707 KAR 1:060.

(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his/her unique needs and capabilities.

(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.

(2) Self-contained classes, separate schooling or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) Each agency providing educational services shall insure that a continuum of placement alternatives is available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools." These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child, (grandparent, stepparent, etc.) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permision prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, are unavailable or the child is a ward of the State,

such child shall be assigned a surrogate parent to represent him/her in all matters relating to the provision of a free, appropriate public education.

1. The State Department of Education and local school districts, in cooperation with other public and private agencies, shall recruit persons who can and will serve as surrogate parents. The State Department of Education, Bureau of Education for Exceptional Children, shall maintain a registry of such persons to act in this capacity. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state; and

d. Be readily accessible to the children they represent.

2. Assignment of a surrogate to a particular child shall be made according to the following procedures:

a. Any person may file a request for the assignment of a surrogate to a child with the child's local school district with a copy of the request to the State Department of Education, Bureau of Education for Exceptional Children.

b. The local school district shall send a notice of the request for a surrogate to the adult in charge of the child's place of residence and to the parent(s) or guardian(s) at their last known address in an effort to determine the need for a surrogate parent.

c. f the local school district determines need for a surrogate as provided in subsection (2)(a) of this section, the State Department of Education, Bureau of Education for Exceptional Children, shall be notified in writing of such need. The Bureau of Education for Exceptional Children shall assign a surrogate within seven (7) calendar days of the notification.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their nonhandicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of PL 94-142 for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records must be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee may not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his/her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) of this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement must accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent must be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and PL 94-142.

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles of individuals in the public agency who have access to education records must be maintained for public inspection.

(15) Public agencies must inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency must inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Taylor N. Hollin
(1) Type and number of entities affected: 180 local school districts
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal. Although the regulation does require a statewide form to be used to obtain medical statements, districts are currently required to maintain this information. The requirement that this be done on forms provided by the state will assure uniformity of information.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal. The regulation will require a form to be designed for obtaining the medical statements necessary for a child to be placed in a home or hospital program.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Senate Bill 390 mandated that a reimbursement formula be established, and outlined the factors such a formula should include.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Portions of KRS 157.360 and 159.030 have been reiterated in the regulation in order to assure clarity and consistency.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering was not applied since all districts must provide home and hospital programs for students identified as needing them. The utilization of options for providing such services precludes the need for tiering.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Education for Exceptional Children
Amended After Hearing

707 KAR 1:055. Programs for home instruction and/or hospital instruction.

RELATES TO: KRS *157.270, 157.360* [157.200 to 157.285], 159.030
PURSUANT TO: KRS [13.082,] 156.070, *157.220* [156.160]

NECESSITY AND FUNCTION: *KRS 157.270 provides for home and hospital instruction of appropriate exceptional children; KRS 157.360 provides the state funding mechanism for home and hospital instruction of exceptional children; and KRS 159.030 provides for home and hospital instruction for all pupils whose physical or mental condition renders school attendance inadvisable.* [To promulgate State Board for Elementary and Secondary Education regulations for home instruction and/or hospital instruction.] This regulation is necessary to assure uniformity in providing special education and related services in the home and/or hospital setting and to conform with Public Law 94-142, *and in order to assure uniform educational services for non-exceptional children in the home or hospital setting.*

Section 1. General Provisions. Local school boards of education shall operate programs for home instruction and/or hospital instruction for children of school attendance age pursuant to KRS 157.200 to 157.285, inclusive, and the criteria listed in this section.

Section 2. Eligibility Criteria. An admissions and release committee shall determine that an exceptional child shall be eligible for instruction in the home, hospital, or sanitorium provided the following criteria are met:
(1) The child is identified as exceptional by meeting the eligibility criteria for one (1) of the categorical programs;
(2) The identified child needs special education and related services; and/or
(3) The condition of the identified child prevents or renders inadvisable attendance at school, *based on a signed medical statement(s) as required by KRS 159.030(2). Forms for the required statement(s) shall be provided by the department of education.*

Section 3. Admissions and Release Committee. As required and provided in 707 KAR 1:051, Section 3, a committee process shall be followed for the identification, evaluation, and placement of exceptional children, as defined in KRS 157.200, in the home instruction and/or hospital instruction programs. The appropriate admissions and release committee shall assure that procedural safeguards as described in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060 shall be followed. The admissions and release committee shall review the statement of the child's condition and any additional reports, information, and assessments that it deems necessary for the placement of each individual child in an appropriate educational program.

Section 4. Child Evaluation. Appropriate child evaluation shall be assured by the appropriate admissions and release committee. Evaluation information shall be obtained pursuant to the requirements in 707 KAR 1:051, Section 4 and the appropriate categorical regulation(s). Evaluations shall include:
(1) A developmental and social history;
(2) Medical statement(s) pursuant to KRS 159.030;
(3) An individual assessment of basic skills, (i.e., math, reading, language);
(4) Written behavioral observation; and/or
(5) Additional reports, information, and assessments deemed necessary by the admissions and release committee for the appropriate placement of each child.

Section 5. Individual Education Program (IEP). As required and provided in 707 KAR 1:051, Section 5, for each exceptional child identified, the appropriate admissions and release committee shall develop and assure the implementation and annual review of an individual education

program. The IEP is required for each exceptional child placed in a program for home instruction and/or hospital instruction.

Section 6. Placement. Placement in a home instruction and/or hospital instruction program shall be determined by the appropriate admissions and release committee pursuant to procedures as described in 707 KAR 1:051, Section 6. The child shall be returned to a less restrictive and more appropriate educational environment when improvement of the condition renders this advisable. Home instruction shall not be used as a substitute for a more appropriate educational placement for exceptional children. *In addition, a temporary placement as an interim placement may occur for thirty (30) school days as determined by the appropriate admissions and release committee for exceptional students who need an alternative placement which is not currently available.* A responsible adult shall be in the home during the time the home instruction teacher is present.

Section 7. Classroom Plan. Programs for home instruction and/or hospital instruction shall be established pursuant to the plan(s) as described in 707 KAR 1:051, Section 1.

Section 8. Membership and Age Range. (1) Classroom membership and age range in programs for home instruction and/or hospital instruction shall be:

Classroom Plans (Units)	*Average Daily Attendance* [Membership]	Age Range
Home Instruction Plan - *Itinerant Teacher*	*10* [5 to 10]	unlimited
Hospital Based - Special Class Teacher	*10* [6 to 15]	unlimited
Home or Hospital Based - *Visiting* Itinerant Teacher	*1 to 10* [5 to 12]	unlimited

[(2) Variations of the above shall be considered for approval upon submission of written request and justification to the Bureau of Education for Exceptional Children. Factors for consideration of approval in determining pupil/teacher ratio and age range will include, but are not limited to, the following:]

[(a) Age and grade level of the pupils;]

[(b) Physical condition of the pupils; and]

[(c) Support personnel.]

Section 9. Temporary Placement for Non-Exceptional Children. Local boards of education shall implement referral and placement procedures in accordance with local board policy for children with temporary conditions such as fractures, surgical recuperation, *or other short-range physical or health impairments who do not meet eligibility criteria for a category of exceptionality. The condition of pregnancy is not to be considered a physical or health impairment in and of itself. Local school districts* [kidney infection, and pregnancy; and local boards] do not need to follow the due process procedures outlined in 707 KAR 1:051 *when placing non-exceptional students, but must assure that the condition of the identified child prevents or renders inadvisable attendance at school based on a signed medical statement(s) as required by KRS 159.030. Forms for the required statement(s) shall be provided by the Department of Education.*

Section 10. The exceptional child who has a temporary condition as defined in Section 9 of this regulation may be placed on home and hospital instruction following appropriate recommendations by the admissions and release committee and specified in the individual education program.

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Taylor N. Hollin

(1) Type and number of entities affected: 180 local school districts

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Although the regulation does rquire a statewide form to be used to obtain medical statements, districts are currently required to maintain this information. The requirement that this be done on forms provided by the state will assure uniformity of information.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal. The regulation will require a form to be designed for obtaining the medical statements necessary for a child to be placed in a home or hospital program.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Senate Bill 390 mandated that a reimbursement formula be established, and outlined the factors such a formula should include.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Portions of KRS 157.360 and 159.030 have been reiterated in the regulation in order to assure clarity and consistency.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering was not applied since all districts must provide home and hospital programs for students identified as needing them. The utilization of options for providing such services precludes the need for tiering.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
Amended After Hearing

904 KAR 5:100. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380
PURSUANT TO: KRS *13A.100* [13.082], 194.050, 341.115
NECESSITY AND FUNCTION: This regulation sets forth the reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. A worker must be registered for work before he shall be eligible to receive benefits. The completion of an initial application for benefits shall also serve as the registration for work. Such registration shall remain active during the worker's benefit year as defined in KRS 341.090(2).

Section 2. Initial and Reopened (Additional) Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person to a public employment office and complete such forms and conform to such procedures as are approved by the secretary *[in Section 2000 and 3000 of the local office manual]. Such procedures are contained in the local office manual in the following sections: 2010, which requires the claimant to provide proper identification before filing a claim for benefits; 2020, which provides for scheduling of claimants for fact-finding interviews to resolve potential issues, describes the forms to be completed by the claimant and claimstaker and provides for exceptions to in-person reporting requirements; 2060, which provides completion instructions for the UI-401, Initial Claim for Benefits; 2065, which requires video entry of a group classification code by which the claimant is scheduled for eligibility review interviews; 2120 and 2130, which relate to the completion of the UI-465A, Eligibility Review Form, and guidelines for assignment to a particular group; 2160, which provides instances when claimants will be required to register for work with the Department for Employment Services; 2170, which requires the conduct of a benefit rights interview; 2230, which provides procedures for taking additional and reactivated claims for benefits; and 3040, which provides continued claims procedures for assuring that the claimant has registered for work has certified that he meets the eligibility requirements, has presented proper identification and has not claimed benefits by mail unless permitted to do so.*

(2) In areas serviced by a full-time public employment office, such initial or reopened claim shall be dated as of the first day of the week in which such worker first reports to such public employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by an itinerant public employment office, such initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to such itinerant office for the purpose of filing a claim for benefits on the first day such office is open following his last day of work; otherwise such claim shall be dated as of the first day of the week in which the worker reports at an itinerant or full-time public employment office.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section such initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less that his customary full-time hours for his regular employer, provided such worker reports to a public employment office for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time public employment office to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file such claim, and in an area serviced by an itinerant office to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a public employment office and complete such forms and conform to such procedures as are approved by the secretary.

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or bi-weekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time public employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by an itinerant public employment office to cover a week or weeks of unemployment ended not earlier then thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, such continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided such worker reports to a public employment office for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Continued claims for partial benefits shall be certified as to earnings when so required by procedures approved by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may establish procedures whereby an individual may file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. Such continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time employment office shall also apply to claims filed by mail, and unless such claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Re-employed Workers. Not-

withstanding the provisions of Section 3, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a public employment office, may file a continued claim for benefits by completing such forms in accordance with such procedures as are approved by the secretary and submitting such forms by mail to the Division *of* [for] Unemployment Insurance. Such continued claim shall cover the week of unemployment indicated on the claim form provided that such week of unemployment ended not earlier than thirty-five (35) days prior to the date on which such claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a public employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Regulations. Notwithstanding any other provisions of this regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of the commission's regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of such findings of the secretary, within which to file such claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 6, 1984
FILED WITH LRC: July 6, 1984 at noon.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: Unemployment insurance benefit claimants, thousands per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: The amendment does not change any process or procedure, hence no impact involved.

Tiering:
Was tiering applied? No. Procedure already in effect; all claimants are to be treated equally under the law.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
Amended After Hearing

904 KAR 5:130. Appeals.

RELATES TO: KRS 341.440
PURUSANT TO: KRS *13A.100* [13.082], 194.050, 341.115
NECESSITY AND FUNCTION: This regulation sets up the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.
(a) Any interested party wishing to appeal to a referee from a notice of determination may do so by filing with the Division *of* [for] Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal.
(b) An appeal to a referee shall be considered filed at the time it is delivered to a representative of the division or deposited in the mail as indicated by the postmark thereon.
(2) Notification of hearings. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties.
(3) Disqualification of referees. No referee shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.
(4) Hearing of appeals.
(a) The claimant and any other party to the appeal may present such evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an apportunity of examining and refuting the same.
(b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.
(c) The hearing shall be scheduled and held at a place where the claimant can attend without undue expense or inconvenience, giving conisderation to the claimant's place of employment.
(d) *The hearing may be conducted via teleconference if the residence of the claimant and his former employer's place of business are not in close geographic proximity, [if*

the claimant resides in a state other than Kentucky] or if other circumstances warrant.

(e) [(d)] The referee may in his discretion grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing, must immediately mail copies of such documents to the referee, and to the opposing party. Failure to provide both the referee and the opposing party with copies of such evidence may result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(c) The mechanical recording of the hearing shall be retained in the divisions files pending further appeal. If no such appeal is initiated, the recording shall be destroyed sixty (60) days from the date the decision is mailed.

(d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. Such corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(e) If the decision is such that previously awarded benefits are to be denied either retroactively or forthwith, then a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission. (1) Presentation of an appeal to the commission:

(a) Any interested party wishing to appeal to the commission from a decision of a referee may make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of such application for leave to appeal shall be mailed by the division to other interested parties.

(b) An application for leave to appeal shall be considered initiated and filed at the time it is delivered to an authorized representative of the commission or the division or deposited in the mail, as indicated by the postmark thereon.

(c) The commission may grant or deny the application for leave to appeal without a hearing or may notify the parties to appear at a specified place and time for argument on the application.

(2) Hearing of appeals:

(a) Except in instances where the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee. In the hearing of an appeal on the record, the parties may, if they desire, present written arguments and, at the commission's discretion be allowed to present oral arguments. [*The parties shall have ten (10) days from the date of mailing of the commission's notification of appeals receipt within which to file written argument.*] *The party presenting an appeal to the commission, (appellant) shall have ten (10) days from the date of mailing of the Commission's notification of appeal receipt within which to file written argument. The appellee shall have seven (7) days thereafter within which to file response. When copies of tape recorded testimony are requested by the appellant, the time for filing of written argument by the appellant shall be a period of ten (10) days from the date of mailing by the commission of the requested tapes. Appellees response shall be due within seven (7) days thereafter. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal. Written argument shall be considered filed when delivered to a representative of the commission, or deposited in the mail, as indicated by the postmark thereon.*

(b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place such evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of such additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.

(3) The hearing of appeals by the commission on cases ordered removed to it from any referee: The procedure on any case before a referee, ordered by the commission to be removed to it, shall be presented, heard and decided by the entire commission in the manner as prescribed for the hearing of other cases before the referee.

(4) The determination of appeals before the commission:

(a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. *At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.*

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the mailing date of such decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is delivered to an authorized representative of the commission or division, or deposited in the mail as indicated by the postmark thereon. The commission shall respond to such requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if such application is denied.

(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. Such manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. General Rules for Both Appeal Stages. (1) Issuance of subpoenas: Subpoenas requested by a claimant or an employer to compel the attendance of witnesses and/or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance thereof setting forth the substance of the anticipated proof to be obtained and the need therefor.

(2) Appeal record: All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appealed claim shall constitute the record with respect to such claim.

(3) Supplying information from the records of the Division *of* [for] Unemployment Insurance: Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for such information shall state, as clearly as possible, the nature of the information desired. Nothing in this regulation shall prevent an interested party or his representative from examining a record in the hands of a referee at a hearing.

(4) Conduct of hearings: All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in such manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the claim shall be considered and passed upon.

(5) Reopening hearings: Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the date thereof, request a rehearing. The request shall be granted if such party has shown good cause for his failure to appear. The request shall be in writing and shall set forth the reasons for his failure to attend the scheduled hearing. The request shall be mailed or delivered to the office where the appeal was filed or the Appeals Branch, the Division *of* [for] Unemployment Insurance, Frankfort, Kentucky. Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing of testimony (tapes) to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at the referee hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the referee decision.

[(b) The fee for such copies shall be five (5) dollars per cassette tape.]

(b) There shall be no charge for this service, however, parties should forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

JAMES P. DANIELS
Commissioner
E. AUSTIN, JR.
Secretary

APPROVED BY AGENCY: July 6, 1984
FILED WITH LRC: July 6, 1984 at noon.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: Parties to unemployment insurance appeals; approximately 12,000 per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Procedures apply equally to all unemployment insurance parties under the law.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
Amended After Hearing

904 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990
PURSUANT TO: KRS 13A.100, 194.050(1), 341.115
NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:

(1) *Unemployment Insurance* Local Office Manual as issued February 1984 and last revised May 1984. *This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and con-*

tinued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting benefit rights interviews; for processing payorder cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-service-members, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.

(2) *Unemployment Insurance* Benefit Branch Procedures Manual issued May 1982 and last revised December 1983. *This manual includes procedures for administering the payment of unemployment insurance benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-service-members, combined wage claimants, interestate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive program; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.*

(3) *Unemployment Insurance* Tax Collection and Accounting Branch Manual issued November 1982 and last revised May 1984. *This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wage and tax reports by making adjustments, assessing additional payment and penalties and crediting tax overpayments; for maintaining records of employer accounts and tax payments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bankruptcy or against monies due to delinquent employers from state agencies.*

(4) *Unemployment Insurance* Administrative Support Branch Manual issued December 1983 and last revised March 1984. *This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control; and for monitoring purchases, expenditures and repairs.*

(5) Unemployment Insurance Field Audit Manual issued February 1984 and last revised May 1984. *This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical assistance to employers.*

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 *and in local unemployment insurance offices located throughout the state.*

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 6, 1984
FILED WITH LRC: July 6, 1984 at noon.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels

(1) Type and number of entities affected: Unemployment insurance benefit claimants; thousands per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: This amendment does not change any process or procedure, hence no impact involved.

Tiering:
Was tiering applied? No. Procedure already in effect; all claimants are to be treated equally under the law.

Proposed Amendments

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Proposed Amendment)

200 KAR 5:308. Small purchase procedures.

RELATES TO: KRS Chapter 45A
PURSUANT TO: KRS 45A.035
NECESSITY AND FUNCTION: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(c) and 45A.100, relating to small purchase procedures. This amendment extends application of small purchase procedures to purchases of construction services and other items by the Department of Parks as authorized by 1984 Acts of the General Assembly, Chapter 384.

Section 1. Small purchase procedures may be used by all agencies within the aggregate amounts prescribed in this regulation. Procurement requirements shall not be parceled, split, divided or purchased over a period of time in order to meet the dollar limitations for use of small purchase procedures. Aggregate amounts for small purchases are:

(1) $10,000 for construction services by all agencies;
(2) $5,000 for equipment replacement parts by the Transportation Cabinet;
(3) $5,000 for all other categories of goods and services purchased by state institutions of higher education, *by the Department of Parks,* and by the Finance and Administration Cabinet [only].
(4) $1,000 for all other purchases, except construction services, by all other agencies.

Section 2. (1) Agencies shall informally obtain three (3) or more price quotations from qualified sources of supply for all small purchases between $3,000 and $10,000 for construction services and between $500 and $1,000 for all other purchases, except state institutions of higher education, *the Department of Parks,* and the Finance and Administration Cabinet shall obtain three (3) or more price quotations from qualified sources of supply for other categories of small purchases between $3,000 and $5,000. The price quotations received, a tabulation of prices offered, and comments by the agency handling the small purchase concerning the basis selected for placing the order, shall be recorded in writing and shall be filed in a small purchase order file to be maintained by the agency.
(2) Small purchases may be from any available source of supply, without first obtaining price quotations from other sources:
(a) By all agencies for construction services costing $3,000 or less;
(b) By the Transportation Cabinet for equipment replacement parts costing $5,000 or less;
(c) By the state institutions of higher education, *the Department of Parks,* and by the Finance and Administration Cabinet for all other categories of goods and services costing $3,000 or less; and
(d) By all other agencies for all other categories of goods and services costing $500 or less.

LESTER M. THOMPSON, Secretary
APPROVED BY AGENCY: July 10, 1984.
FILED WITH LRC: July 11, 1984 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 10 a.m. in Room 207 of the Capitol Annex Building. Those interested in attending this hearing shall contact: Mike Diehl, Director, Division of Purchases, Room 348, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael H. Diehl
(1) Type and number of entities affected: State agencies (2 - Finance and Parks Department)
(a) Direct and indirect costs or savings to those affected: Unknown
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No increase in paperwork or reporting contemplated by virtue of this proposed amendment.
(2) Effects on the promulgating administrative body: Unknown
(a) Direct and indirect costs or savings: Unknown
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Inapplicable
(4) Assessment of alternative methods; reasons why alternatives were rejected: Inapplicable
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This proposed amendment is to extend the small purchase limitations of the regulation to the Department of Parks as authorized by Chapter 384, Acts of the 1984 General Assembly.

Tiering:
Was tiering applied? No. Tiering inapplicable to this regulation.

FINANCE AND ADMINISTRATION CABINET
State Board of Examiners of Social Work
(Proposed Amendment)

201 KAR 23:030. License renewal; fee.

RELATES TO: KRS 335.010 to 335.150
PURSUANT TO: KRS [13.082,] 335.070, 335.130

NECESSITY AND FUNCTION: This regulation clarifies the conditions for renewal of licenses granted under the provision of KRS Chapter 335.

Section 1. Licenses and certificates must be renewed three (3) years from the date of issuance or from last date of renewal. Failure to submit the required renewal application and fee on or before the last day of the current term will automatically invalidate such license or certificate without official notice by the board.

Section 2. *Each certified social worker, social worker, and licensee holding a certificate of qualification for independent practice must secure a license from the State Board of Examiners of Social Work by paying an initial fee of thirty (30) dollars. Each certified social worker, social worker, and licensee holding a certificate of qualification for independent social work shall renew his license or certificate every three (3) years by paying a renewal fee at the rate of fifteen (15) dollars per year for a social worker, twenty (20) dollars per year for a certified social worker, and twenty-five (25) dollars per year for a licensee holding a certificate of qualification for independent social work.* [Renewal fees shall be thirty (30) dollars for licensure.]

Section 3. The licensee shall have complied with such continuing education requirements as may be required by the board in other sections of KRS Chapter 335.

Section 4. Licensees shall record on their renewal application any continuing education obtained during the preceeding three (3) years.

Section 5. Any licensee that is under suspension at the time of renewal shall be renewed but the period of suspension shall continue to run and not be affected by the renewal.

KEN PHILLIPS
Chairman

APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 12, 1984 at 9:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on August 27, 1984, at 9:30 a.m. at the Berry Hill Annex. Anyone interested in attending this hearing shall notify in writing at least five days before the hearing: David L. Nicholas, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David L. Nicholas
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Costs for licenses will be changed as follows: Social Worker, increased from $30 for 3 years to $15 per year, 1089 licenses effected; Certified Social Worker, increased from $30 for 3 years to $20 per year, 883 licenses effected; Certificate for Independent Practice, increased from $30 for 3 years to $25 per year, 438 licenses effected. Since the licenses are for 3 years and are renewed on their anniversary date, it is impractical to compute the costs on a yearly basis.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No charge
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The board is funded solely by licensure fees deposited in a trust and agency fund. The increase in licensure fees will generate an additional $62,500 over the three-year period. Because these licenses are for 3 years and are renewed on their anniversary date, it is impractical to break these down on a yearly basis.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Board expenses have risen to the point where an increase in licensure fees is necessary for the continual operation of normal board activities.

Tiering:
Was tiering applied? Tiering was not applied because the statute authorizing renewal licenses, KRS 335.130, does not authorize tiering within the various types of licenses.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 30:010. Definitions.

RELATES TO: KRS 224.033, 224.835, 224.846, 224.855 to 224.889
PURSUANT TO: KRS [13.082, 13.083,] 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.017 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to adopt rules and regulations for the management of solid and hazardous wastes. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 31 through 49. This regulation defines essential terms used in connection with the waste management regulations.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context, terms in KRS Chapter 224 used in the waste management regulations shall have the meanings given in this regulation.
(1) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a hazardous waste site or facility would be damaged and thereby pose a threat to human health and the environment.
(2) "Active life of a facility" means that period of time for a facility between the beginning of construction and continuing through the closure period.
(3) "Active portion" means any area of a facility where treatment, storage or disposal operations are being con-

ducted. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the secretary.

(4) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(5) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners must be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(6) "Agricultural waste" means any non-hazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(7) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(8) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, and/or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(10) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(11) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(12) "Board" means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201(1)).

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet (KRS 224.005(7)).

(14) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous or saline soils.

(15) "Cell" means a portion of a landfill which is isolated, usually by means of an approved barrier.

(16) "Certificate" means a certificate of environmental safety and public necessity (KRS 224.2201(2)).

(17) "Certification" means a statement of professional opinion based upon knowledge and belief.

(18) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(19) "Closure" means the time at which a waste treatment, storage or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses (KRS 224.005(4)).

(20) "Coal mining solid waste" means solid waste as defined by KRS 224.005 which is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(21) "Coal mining waste" means earth materials which are combustible, physicially unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(22) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(23) "Constituent" or "hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(24) "Construction materials" means non-hazardous non-soluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

(25) "Contained landfill" see "solid waste site or facility - contained landfill."

(26) "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise
handled.

(27) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in Section 2 of 401 KAR 30:030 and 401 KAR 34:060, Section 8.

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in Section 2 of 401 KAR 30:030 and 401 KAR 34:060, Section 8.

(28) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(29) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(30) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(31) "Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(32) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(33) "Director" means the director of the cabinet#s division of waste management.

(34) "Discharge" means but is not limited to spilling, leaking, pumping, pouring, emitting, emptying, or dumping (KRS 224.877(a)).

(35) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(36) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment, be emitted into the air or be discharged into any water, including groundwaters (KRS 224.005(8)).

(37) "Disposal facility" see "hazardous waste site or facility - disposal facility."

(38) "Elementary neutralization unit" see subsection (64)(b) of this section.

(39) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(40) "Environmental emergency" includes any release or threatened release of materials into the environment in such quantities or concentrations as cause or threaten to cause an imminent and substantial danger to human health or the environment; the term includes, but is not limited to, discharges of oil and hazardous substances prohibited by section 311(b)(3) of the federal Clean Water Act (P.L. 92-500), as amended (KRS 224.877(1)(d).

(41) "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(42) "EPA identification number" means the number assigned by EPA or the cabinet to each generator, transporter, and treatment, storage, or disposal facility.

(43) "EPA region" means the states and territories found in any one (1) of the following ten (10) regions:

Region I—Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II—New York, New Jersey, Puerto Rico, and the Virgin Islands.

Region III—Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V—Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

Region VI—New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII—Nebraska, Kansas, Missouri, and Iowa.

Region VIII—Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX—California, Nevada, Arizona, Hawaii, Guam, American Samoa, and Commonwealth of Northern Mariana Islands.

Region X—Washington, Oregon, Idaho, and Alaska.

(44) "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR 47:040 or 401 KAR 47:050, approved by the secretary of the cabinet.

(45) "Existing hazardous waste site or facility" or "existing facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(46) "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(47) "Explosive gas" means methane (CH4) in 401 KAR 30:030, Section 1(1).

(48) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one (1) or more landfills, surface impoundments, or combination of them).

(49) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(50) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(51) "Final closure of a waste facility" means the procedures which must be followed by a facility owner/operator when it is determined that the facility will no longer accept waste for treatment, storage, or disposal on the entire facility.

(52) "Final cover" means cover material, soil or other suitable material, that is applied upon closure of a landfill or sanitary landfill and is permanently exposed to the natural elements.

(53) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless othewise specified in 401 KAR 47:040.

(54) "Food chain crops" means tobacco, crops grown

for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(55) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(56) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(57) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR Chapter 31 or whose act first causes a hazardous waste to become subject to regulation.

(58) "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

(59) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(60) "Hazardous substance" means any substance or combination of substances including wastes of a solid, liquid, gaseous or semi-solid form which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. Such substances may include but are not limited to those which are, according to criteria established by the cabinet, toxic, corrosive, ignitable, irritants, strong sensitizers or explosive (KRS 224.877(b)).

(61) "Hazardous waste constituent" means a constituent that caused the administrator to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(62) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(63) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, and/or disposed of by landfilling, incineration, or any other method.

(a) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(b) "Elementary neutralization unit" means a tank, container, transport vehicle, or vessel which is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in 401 KAR Chapter 31 or are wastes listed in 401 KAR Chapter 31 only for this reason.

(c) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

(d) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(e) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(f) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(g) "Pile" or "waste pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(h) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on-site or off-site is not operating or maintaining a storage facility.

(i) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(j) "Tank" means a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthern materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(k) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(l) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(m) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(n) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, stores, treats, generates or accumulates wastewater treatment sludge, either of which is a hazardous waste.

(64) "Holocene" means the most recent epoch of the quartenary period, extending from the end of the pleistocene to the present.

(65) "Inactive portion" means that portion of a hazardous waste site or facility which is not operated after November 19, 1980.

(66) "Incinerator" see "hazardous waste site or facility - incinerator."

(67) "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with

another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(68) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(69) "Inert landfill" see "solid waste site or facility - inert landfill."

(70) "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(71) "Injection well" see "hazardous waste site or facility - injection well."

(72) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(73) "In operation" refers to a facility which is treating, storing or disposing of hazardous waste.

(74) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until such time as final administrative disposition of such application is made.

(75) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(76) "KPDES" means Kentucky Pollutant Discharge System.

(77) "Labpack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(78) "Landfarming facility" see "solid waste site or facility - landfarming facility."

(79) "Landfill" see "hazardous waste site or facility - landfill."

(80) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(81) "Land treatment facility" see "hazardous waste site or facility -land treatment facility."

(82) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(83) "Liner" means a continuous layer of natural or man-made material, beneath or on the sides of a hazardous waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a solid waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(84) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(85) "Major modification" means a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste management facility. (Note: Minor modifications are described in Section 3 of 401 KAR 38:040.)

(86) "Manifest" means the shipping document *form contained in Appendix A of 401 KAR 32:100, and if necessary the form contained in Appendix B of 401 KAR 32:100,* originated and signed by the generator *in accordance with the instructions included in 401 KAR 32:100* [, used in a management control system to trace the movement of hazardous wastes from generation to final disposal (KRS 224.005(30))].

(87) "Manifest document number" means the *U.S. EPA twelve (12) digit identification number assigned to the generator plus a unique five (5) digit document number assigned* [serially increasing number assigned] to the manifest by the generator for recordkeeping and reporting purposes.

(88) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that desposit and is then used for reclamation of a surface mine.

(89) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(90) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(91) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(92) "NPDES" means National Pollutant Discharge Elimination System (KRS 224.005(29)).

(93) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(94) "Off-site" means properties non-contiguous to the generation site.

(95) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(96) "One-hundred year flood" means a flood that has a one (1) percent or one (1) in 100 or greater chance of recurring in any year, or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period, taking into consideration the present engineering aspect of the floodplain.

(97) "Open burning" means the combustion of any material without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(98) "Open dump" means any facility or site for the disposal of solid waste which does not meet the criteria for a sanitary landfill under regulations promulgated by the department which shall be consistent with regulations pro-

mulgated under section 4004, Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580), and which is not a facility for disposal of hazardous waste (KRS 224.005(31)).

(99) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and/or disposal of wastes.

(100) "Owner/operator of a waste facility" means the owner of an on-site or off-site waste treatment, storage, or disposal facility, as well as any person with whom rests ultimate decision-making authority over the facility.

(101) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(102) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 through 401 KAR 38:210. Specifically, Part B consists of submitting all of the information required in 401 KAR 38:090 through 401 KAR 38:210; there are no official forms for the submission.

(103) "Partial closure of a hazardous waste facility" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of 401 KAR Chapter 34 or 35.

(104) "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector#s access to the waste.

(105) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management regulations. The term "permit" includes also "permit by rule," and "emergency permit." However, the term "permit" does not include "draft permit" or a "proposed permit:"

(a) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of 401 KAR 38:060, Section 4.

(b) "Permit by rule" means that certain classes of sites or facilities are presumed to hold a permit so long as the operations of such sites or facilities meet interim status requirements and/or do not present a threat of imminent hazard to public health or a substantial environmental impact, in violation of any of the environmental performance standards specified in 401 KAR 30:020 or 30:030 or the maximum groundwater contaminant levels specified in Section 5 of 401 KAR 34:060.

(106) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, and/or dispose of waste.

(107) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body (KRS 224.005(12)).

(108) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management regulations.

(109 "Pile" see subsection (64)(g) of this section.

(110) "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, or vessel or other floating craft from which polluants are or may be discharged. This term does not include return flows from irrigated agriculture.

(111) "Post-closure care" means the manner in which a facility must be maintained when it no longer accepts hazardous waste for disposal.

(112) "Post-closure monitoring and maintenance" means the routine care, maintenance and monitoring of a solid waste disposal facility or hazardous waste treatment, storage, or disposal facility following closure of the facility.

(113) "Preventive measures" means the installation or testing of equipment or devices, designated way of performing a specified operation or the preparation of an emergency response plan (KRS 224.877(c)).

(114) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and recovery) of any municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth (KRS 224.005(14)).

(115) "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

(116) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(117) "Recovered material" means waste material and by-products which have been recovered or diverted from waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (KRS 224.005(15)).

(118) "Recycling" means any treatment process for the reclamation of material or energy from waste (KRS 224.005(16)).

(119) "Regional Administrator" means the regional administrator for the EPA region in which the facility is located, or his designee.

(120) "Regional integrated waste treatment and disposal demonstration facility" means a model hazardous waste facility receiving wastes from a region larger than the county boundaries in which it is located, from more than one (1) person, and utilizing multiple treatment and disposal technologies, one (1) of which must be a secure landfill, and one (1) of which must be a high technology incinerator, and designed so as to promote resource recovery and energy generation from hazardous waste and the use of state-of-the-art techniques for rendering waste non-hazardous, and the disposal of waste in a manner that minimizes the risk to public health and long term environmental impacts (KRS 224.2201(4)).

(121) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continue to receive waste after January 26, 1983.

(122) "Residential landfill" see "solid waste site or facility - residential landfill."

(123) "Residual landfill" see "solid waste site or facility - residual landfill."

(124) "Representative sample" means a sample of a universe or whole (e.g., wastepile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(125) "Resource recovery" means the process by which materials subject to the waste management regulations which still have useful physical or chemical properties are reused for the same or other purposes, including uses as an energy source.

(126) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(127) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(128) "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the cabinet.

(129) "Sanitary landfill" means a facility for the disposal of solid waste which complies with the "Environmental performance standards" specified in 401 KAR 30:030.

(130) "Saturated zone (zone of saturation)" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

(131) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(132) "Secretary" means the secretary of the Natural Resources and Environmental Protection Cabinet (KRS 224.005(17)).

(133) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other such waste having similar characteristics and effects.

(134) "Solid waste management" means the administration of solid waste activities: collection, source separation, storage, transportation, transfer, processing, treatment and disposal, which shall be in accordance with a departmentally approved county or multi-county solid waste management plan (KRS 224.005(32)).

(135) "Solid waste management area" or "area" means any county or group of counties so designated by the cabinet by approval of the local solid waste management plan (KRS 224.005(33)).

(136) "Solid waste management facility" means any resource recovery system or component thereof, any system, program or facility for resource conservation, and any facility for collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise (KRS 224.005(34)).

(137) "Solid waste site or facility" means one (1) of the four (4) categories of sanitary landfills or a land farming facility permitted by the cabinet for the disposal of solid waste involving the placement of solid waste on or into the land surface as follows:

(a) "Inert landfill" means a facility for the proper disposal of inert, non-soluble and non-putrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimming, etc.) may be considered by the cabinet for disposal at inert landfills.

(b) "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(c) "Contained landfill" means a facility for the proper disposal of solid waste including those industrial wastes, special wastes, or hazardous wastes exempted by regulation and any non-hazardous waste without case-by-case approval from the cabinet.

(d) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained and closed in conformance with the "Environmental performance standards" of 401 KAR 30:030, Section 1(1) and which receives a case-by-case design review by the cabinet.

(e) "Landfarming facility" means a facility for land application of sludges or other residual waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(138) "Special wastes" means those wastes of high volume and low hazard which include, but are not limited to, mining waste, utility wastes (fly ash, bottom ash, scrubber sludge), sludge from water treatment facilities and waste water treatment facilities, cement kiln dust, gas and oil drilling muds and oil production brines (KRS 224.868(1)(a)).

(139) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(140) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam but does not include any foreign country.

(141) "Storage facility" see "hazardous waste site or facility - storage facility."

(142) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(143) "Surface impoundment" see "hazardous waste site or facility - surface impoundment."

(144) "Tank" see "hazardous waste site or facility - tank."

(145) "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste treatment, storage or disposal site or facility when formal responsibilities for post-closure monitoring and maintenance cease (KRS 224.005(19)).

(146) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(147) "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

(148) "Totally enclosed treatment facility" see "hazardous waste site or facility - totally enclosed treatment facility."

(149)"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(150) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each

cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(151) "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto (KRS 224.005(22)).

(152) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(153) "Treatment" means any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous (KRS 224.005(23)).

(154) "Treatment facility" see "hazardous waste site or facility - treatment facility."

(155) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(156) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or man-made depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(157) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(158) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "hazardous waste site or facility, injection well.")

(159) "Unsaturated zone (zone of aeration)" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(160) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility#s property boundary.

(161) "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(162) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on the water.

(163) "Washout" means the carrying away of waste by waters of the base flood.

(164) "Waste" means:

(a) "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse and overburden) and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (KRS 224.005(24)(a));

(b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; nothing in this chapter shall be construed to apply to any activity or substance which is subject to the federal Atomic Energy Act of 1954, as amended (68 Stat. 923) (KRS 224.005(24)(b)).

(165) "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(166) "Waste management district" means any county or group of counties electing to form under the provisions of KRS 109.071 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource and Conservation and Recovery Act of 1976, as amended (P.L. 94-580) (KRS 224.005(25)).

(167) "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit."

(168) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(169) "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction (KRS 224.005(26)).

(170) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(171) "Wetlands" means those areas that are inundated

by surface water or groundwater with a frequency and duration sufficient to support a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

(172) "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in 401 KAR Chapters 30 through 49 can be found in Table 1.

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
EP Toxicity	Extraction procedure toxicity
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution and Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky
l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Pollutants
NPDES	National Pollution and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Undergound Injection Control
UICP	Underground Injection Control Program
USC	United States Code
USEPA	United States Environmental Protection Agency
USPS	United States Postal Service

Section 3. References. Title 401, Chapter 30 through 49, incorporate certain publications by reference. The publications listed in 40 CFR Part 260.11 are adopted and filed herein by reference. Copies of these publications may be obtained as follows:

(1) "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278-78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, Battery March Park, Quincy, Massachusetts 02269.

[(3) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (1980), EPA publication number SW-846, available from the U.S. Environmental Protection Agency, Solid Waste Information, 26 W. St. Clair Street, Cincinnati, Ohio 45268.]

(3) [(4)] "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication, SW-846 (Second Edition, 1982), copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238, on a subscription basis, and future updates will automatically be mailed to this subscriber.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
RECEIVED BY LRC: July 13, 1984 at 10:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m. Persons interested in attending this hearing shall contact: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601. The written comment period will close at 4:30 p.m. on August 22, 1984.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:040. Lists of hazardous waste.

RELATES TO: KRS 224.830 through 224.877, 224.994
PURSUANT TO: KRS *13A.210, 224.033* [13.082, 13.083, 224.017,] 224.864(3)
NECESSITY AND FUNCTION: KRS 224.864(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list

hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the lists of hazardous wastes.

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet will indicate the basis for listing the classes or types of wastes listed in this regulation by employing one (1) or more of the following Hazard Codes:

Hazardous Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	EP toxic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent which caused the cabinet to list the waste as an EP toxic waste (E) or toxic waste (T) in Sections 2 and 3 of this regulation.

(3) Each hazardous waste listed in this regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number must be used in complying with the notification requirements of KRS 224.864 and certain recordkeeping and reporting requirements under 401 KAR Chapters 32 through 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010.

Section 2. Hazardous Wastes from Non-Specific Sources. Hazardous wastes from non-specific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloro-ethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations.	(I,T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,2,1-trichoroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, and trichlorofluoromethane; and the still bottoms from the recovery of these solvents.	(T)
F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents.	(I)
F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; and the still bottoms from the recovery of these solvents.	(T)
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions).	(R,T)
F008	Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).	(R,T)
F010	Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges).	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).	(R,T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).	(T)
F024	*Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 2 of this regulation.)*	*(T)*

Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)
K014	Bottoms from the acetoniltrile purification column in the production of acrylonitrile.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methy ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
Inorganic Chemicals:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
Pesticides:		
K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the productionof chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)

K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)

Explosives:

K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations.	(T)

Petroleum Refining:

K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)

Iron and Steel:

K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K062	Spent pickle liquor from steel finishing operations.	(C,T)

Secondary Lead:

K069	Emission control dust/sludge from secondary lead smelting.	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)

Veterinary Pharmaceuticals:

K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)

Ink Formulation

K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)

Coking:

K060	Ammonia still lime sludge from coking operations.	(T)
K087	Decanter tank tar sludge from coking operations.	(T)

Section 4. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(1) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic names listed in subsection (5) of this section, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) of this section unless:

(a) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or

(b) The container or inner liner has been cleansed by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(c) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

(4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of
this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (1) through (4) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
P023	Acetaldehyde, chloro-
P002	Acetamide, N-(Aminothioxomethyl)-
P057	Acetamide, 2-fluoro-
P058	Acetic acid, fluoro-, sodium salt
P066	Acetimidic acid, N-((methylcarbamoyl)oxy) thio-, methyl ester
P001	3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts
P002	1-Acetyl-2-thiourea
P003	Acrolein
P070	Aldicarb
P004	Aldrin
P005	Allyl alcohol
P006	Aluminum phosphide
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-aAminopyridine
P009	Ammonium picrate (R)
P119	Ammonium vanadate
P010	Arsenic acid
P012	Arsenic (III) oxide
P011	Arsenic (V) oxide
P011	Arsenic pentroxide
P012	Arsenic trioxide
P038	Arsine, diethyl-
P054	Aziridine
P013	Barium cyanide
P024	Benzenamine, 4-chloro-
P077	Benzenamine, 4-nitro-
P028	Benzene, (chloromethyl)-
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-
P014	Benzenethiol
P028	Benzyl chloride
P015	Beryllium dust
P016	Bis(chloromethyl) ether
P017	Bromoacetone
P018	Brucine
P021	Calcium cyanide
P123	Camphene, octachloro-
P103	Carbamimidoselenoic acid
P022	Carbon bisulfide
P022	Carbon disulfide
P095	Carbonyl chloride
P033	Chlorine cyanide
P023	Chloroacetaldehyde
P024	p-Chloroaniline
P026	1-(o-Chlorophyenyl)thiourea
P027	3-Chloropropionitrile
P029	Copper cyanides
P030	Cyanides (soluble cyanide salts), not elsewhere specified
P031	Cyanogen
P033	Cyanogen chloride
P036	Dichlorophenylarsine
P037	Dieldrin
P038	Diethylarsine
P039	O,O-Diethyl S-(2-(ethylthio)ethyl) phosphorothioate
P041	Diethyl-p-nitrophenyl phosphate
P040	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	Diisopropyl fluorophosphate
P044	Dimethoate
P045	3,3-Dimethyl-1-(methylthio)-2-butanone, O-((methylamino)carbonyl) oxime
P071	O,O-Dimethyl O-p-nitrophenyl phosphorothioate
P082	Dimethylnitrosamine
P046	alpha, alpha-Dimethylphenethylamine
P047	4,6-Dinitro-o-cresol and salts
P034	4,6-Dinitro-o-cyclohexyphenol
P048	2,4-Dinitrophenol
P020	Dinoseb
P085	Diphosphoramide, octamethyl-
P039	Disulfoton
P049	2,4-Dithiobiuret
P109	Dithiopyrophosphoric acid, tetraethyl ester
P050	Endosulfan
P088	Endothall
P051	Endrin
P042	Epinephrine
P046	Ethanamine, 1,1-dimethyl-2-phenyl-
P084	Ethenamine, N-methyl-N-nitroso-
P101	Ethyl cyanide
P054	Ethylenimine
P097	Famphur
P056	Fluorine
P057	Fluoroacetamide
P058	Fluoroacetic acid, sodium salt
P065	Fulminic acid, mercury (II) salt (R,T)
P059	Heptachlor
P051	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a, 5,6,7,8,8a-octahydro-endo, endo-1,4:5,8-dimethanonaphthalene
P037	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4, 4a,5,6,7,8,8a-octahydro-endo, exo-1, 4:5, 8-demethanonaphthalene
P060	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanophthalene
P004	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exodimethanonaphthalene
P060	Hexachlorohexahydro-exo-dimethanonaphthalene
P062	Hexaethyl tetraphosphate
P116	Hydrazinecarbothioamide
P068	Hydrazine, methyl
P063	Hydrocyanic acid
P063	Hydrogen cyanide
P096	Hydrogen phosphide
P064	Isocyanic acid, methyl ester
P007	3(2H)-Isoxazolone,5-(aminomethyl)-
P092	Mercury, (acetato-O) phenyl-
P065	Mercury fulminate (R,T)
P016	Methane, oxybis (chloro-)
P112	Methane, tetranitro-(R)
P118	Methanethiol, trichloro-
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P066	Methomyl
P067	2-Methylaziridine
P068	Methyl hydrazine
P064	Methyl isocyanate
P069	2-Methyllactonitrile
P071	Methyl parathion
P072	alpha-Naphthylthiourea

P073	Nickel carbonyl
P074	Nickel cyanide
P074	Nickel (II) cyanide
P073	Nickel tetracarbonyl
P075	Nicotine and salts
P076	Nitric oxide
P077	p-Nitroaniline
P078	Nitrogen dioxide
P076	Nitrogen (II) oxide
P078	Nitrogen (IV) oxide
P081	Nitroglycerine (R)
P082	N-Nitrosodimethylamine
P084	N-Nitrosomethylvinylamine
P050	5-Norbornene-2,3-dimethanol,1,4,5,6,7, 7-hexachloro, cyclic sulfite
P085	Octamethylpyrophosphoramide
P087	Osmium oxide
P087	Osmium tetroxide
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid
P089	Parathion
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-
P048	Phenol,2, 4-dinitro
P047	Phenol, 2, 4-dinitro-6-methyl-
P020	Phenol, 2,4-dinitro-6-(1-methylpropyl)-
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P036	Phenyl dichloroarsine
P092	Phenylmercuric acetate
P093	N-Phenylthiourea
P094	Phorate
P095	Phosgene
P096	Phosphine
P041	Phosphoric acid, diethyl p-nitrophenyl ester
P044	Phosphorodithioic acid, O, O-dimethyl S-(2(methylamino)-2-oxoethyl) ester
P043	Phosphorofluoric acid, bis(1-methylethyl)-ester
P094	Phosphorothioic acid, O, O-diethyl S-(ethylthio) methyl ester
P089	Phosphorothioic acid, O, O-diethyl O-(p-nitrophenyl) ester
P040	Phosphorothioic acid, O, O-diethyl O-pyrazinyl ester
P097	Phosphorothioic acid, O, O-dimethyl O-(p((dimethylamino)-sulfonyl)phenyl) ester
P110	Plumbane, tetraethyl-
P098	Potassium cyanide
P099	Potassium silver cyanide
P070	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P101	Propanenitrile
P027	Propanenitrile, 3-chloro-
P069	Propanenitrile, 2-hydroxy-2-methyl-
P081	1,2,3-Propanetriol, trinitrate-(R)
P017	2-Propanone, 1-bromo-
P102	Propargyl alcohol
P003	2-Propenal
P005	2-Propen-1-ol
P067	1,2-Propylenimine
P102	2-Propyn-1-ol
P008	4-Pyridinamine
P075	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl); and salts
P111	Pyrophosphoric acid, tetraethyl ester
P103	Selenourea
P104	Silver cyanide
P105	Sodium azide
P106	Sodium cyanide
P107	Strontium sulfide
P108	Strychnidin-10-one, and salts
P018	Strychnidin-10-one, 2, 3-dimethoxy
P108	Strychnine and salts
P115	Sulfuric acid, thallium(I) salt
P109	Tetraethyldithiopyrophosphate
P110	Tetraethyl lead
P111	Tetraethylpyrophosphate
P112	Tetranitromethane (R)
P062	Tetraphosphoric acid, hexaethyl ester
P113	Thallic oxide
P113	(III) oxide
P114	Thallium (I) selenite
P115	Thallium (I) sulfate
P045	Thiofanox
P049	Thioimidodicarbonic diamide
P014	Thiophenol
P116	Thiosemicarbazide
P026	Thiourea, (2-chlorophenyl)-
P072	Thiourea, 1-naphthalenyl-
P093	Thiourea, phenyl-
P123	Toxaphene
P118	Trichloromethanethiol
P119	Vanadic acid, ammonium salt
P120	Vanadium pentoxide
P120	Vanadium (V) oxide
P001	Warfarin
P121	Zinc cyanide
P122	Zinc phosphide (R,T)

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in Section 5(1) and (6) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
U001	Acetaldehyde (I)
U034	Acetaldehyde, trichloro-
U187	Acetamide, N-(4-ethoxyphenyl)-
U005	Acetamide, N-9H-fluoren-2-yl-
U112	Acetic acid, ethyl ester (I)
U144	Acetic acid, lead salt
U214	Acetic acid, thallium (I) salt
U002	Acetone (I)
U003	Acetonitrile (I,T)
U004	Acetophenone
U005	2-Acetylaminofluorene
U006	Acetyl chloride (C,R,T)
U007	Acrylamide
U008	Acrylic acid (I)
U009	Acrylonitrile
U150	Alanine, 3-(p-bis(2-chlorethyl)amino) phenyl-,L-
U011	Amitrole
U012	Aniline (I,T)
U014	Auramine
U015	Azaserine

U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
U016	Benz(c)acridine
U016	3,4-Benzacridine
U017	Benzal chloride
U018	Benz(a)anthracene
U018	1,2-Benzanthracene
U094	1,2-Benzanthracene, 7,12-dimethyl-
U012	Benzenamine (I,T)
U014	Benzenamine, 4,4'-carbonimidoylbis (N, N-dimethyl-)
U049	Benzenamine, 4-chloro-2-methyl-
U093	Benzenamine, N, N'-dimethyl-4-phenylazo-
U158	Benzenamine, 4,4'-methylenebis (2-chloro-)
U222	Benzenamine, 2-methyl-, hydrochloride
U181	Benzenamine, 2-methyl-5-nitro
U019	Benzene (I,T)
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy, ethyl ester
U030	Benzene, 1-bromo-4-phenoxy-
U037	Benzene, chloro-
U190	1,2-Benzenedicarboxylic acid anhydride
U028	1,2-Benzenedicarboxylic acid, (bis(2-ethyl-hexyl)) ester
U069	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	1,2-Benzenedicarboxylic acid, diethyl ester
U102	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	1,2-Benzenedicarboxyic acid, di-n-octyl ester
U070	Benzene, 1,2-dichloro-
U071	Benzene, 1,3-dichloro-
U072	Benzene, 1,4-cichloro-
U017	Benzene, (dichloromethyl)-
U223	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	Benzene, dimethyl- (I,T)
U201	1,3-Benzenediol
U127	Benzene, hexachloro-
U056	Benzene, hexahydro (I)-
U188	Benzene, hydroxy-
U220	Benzene, methyl-
U105	Benzene, 1-methyl-1-2, 4-dinitro-
U106	Benzene, 1-methyl-2,6-dinitro-
U203	Benzene, 1,2-methylenedioxy-4-allyl-
U141	Benzene, 1,2-methylenedioxy-4-propenyl-
U090	Benzene, 1,2-methylenedioxy-4-propyl-
U055	Benzene, (1-methylethyl),(I)
U169	Benzene, nitro- (I,T)
U183	Benzene, pentachloro-
U185	Benzene, pentachloro-nitro-
U020	Benzenesulfonic acid chloride (C,R)
U020	Benzenesulfonyl chloride (C,R)
U207	Benzene, 1,2,4,5-tetrachloro-
U023	Benzene, (trichloromethyl)- (C,R,T)
U234	Benzene, 1,3,5-trinitro- (R,T)
U021	Benzidine
U202	1,2-Benzisothiazolin-3-one,1, 1-dioxide
U120	Benzo(j,k)fluorene
U022	Benzo(a)pyrene
U022	3,4-Benzopyrene
U197	p-Benzoquinone
U023	Benzotrichloride (C,R,T)
U050	1,2-Benzphenanthrene
U085	2,2-Bioxirane (I,T)
U021	(1,1'Biphenyl)-4,4'-diamine
U073	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-
U091	(1,1'-Biphenyl)-4,4'-diamine,3,3',dime thoxy-
U095	(1,1'-Biphenyl)-4,4'-diamine,3,3',dime-thyl-
U024	Bis(2-chloroethyoxy) methane
U027	Bis(2-chloroisopropyl) ether
U244	Bis(dimethylthiocarbamoyl) disulfide
U028	Bis(2-ethyhexyl) phthalate
U246	Bromine cyanide
U225	Bromoform
U030	4-Bromophenyl phenyl ether
U128	1,3-Butadiene,1,1,2,3,4,4-hexachloro-
U172	1-Butanamine, N,-butyl-N-nitroso
U035	Butanoic acid, 4-(Bis(2-chloroethyl)amino) benzene-
U031	1-Butanol (I)
U159	2-Butanone (I,T)
U160	2-Butanone peroxide (R,T)
U053	2-Butenal
U074	2-Butene,1,4-dichloro- (I,T)
U031	n-Butyl alcohol (I)
U136	Cacodylic acid
U032	Calcium chromate
U238	Carbamic acid, ethyl ester
U178	Carbamic acid, methylnitroso-, ethyl ester
U176	Carbamide, N-ethyl-N-nitroso-
U177	Carbamide, N-methyl-N-nitroso-
U219	Carbamide, thio-
U097	Carbamoyl chloride, dimethyl-
U215	Carbonic acid, dithallium (I) salt
U156	Carbonochloridic acid, methyl ester (I,T)
U033	Carbon oxyfluoride (R,T)
U211	Carbon tetrachloride
U033	Carbonyl fluoride (R,T)
U034	Chloral
U035	Chlorambucil
U036	Chlordane, technical
U026	Chlornaphazine
U037	Chlorobenzene
U039	4-Chloro-m-cresol
U041	1-Chloro-2,3-epoxypropane
U042	2-Chlorethyl vinyl ether
U044	Chloroform
U046	Chloromethyl methyl ether
U047	beta-Chloronaphthalene
U048	o-Chlorophenol
U049	4-Chloro-o-toluidine, hydrochloride
U032	Chromic acid, calcium salt
U050	Chrysene
U051	Creosote
U052	Cresols
U052	Cresylic acid
U053	Crotonaldehyde
U055	Cumene (I)
U246	Cyanogen bromide
U197	1,4-Cyclohexadienedione
U056	Cyclohexane (I)
U057	Cyclohexanone (I)
U130	1,3-Cyclopentadiene,1,2,3,4,5,5-hexa-chloro-
U058	Cyclophosphamide
U240	2,4-D, salts and esters
U059	Daunomycin
U060	DDD

U061	DDT
U142	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta (c,d)-pentalen-2-one
U062	Diallate
U133	Diamine (R,T)
U221	Diaminotoluene
U063	Dibenz(a,h) anthracene
U063	1,2:5,6-Dibenzanthracene
U064	1,2:7,8-Dibenzopyrene
U064	Dibenz(a,i) pyrene
U066	1,2-Dibromo-3-chloropropane
U069	Dibutyl phthalate
U062	S-(2,3-Dichloroallyl) diisopropyl-thiocarbamate
U070	o-Dichlorobenzene
U071	m-Dichlorobenzene
U072	p-Dichlorobenzene
U073	3,3'-Dichlorobenzidine
U074	1,4-Dichloro-2-butene (I,T)
U075	Dichlorodifluoromethane
U192	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl) benzamide
U060	Dichloro diphenyl dichloroethane
U061	Dichloro diphenyl trichloroethane
U078	1,1-Dichloroethylene
U079	1,2-Dichloroethylene
U025	Dichloroethyl ether
U081	2,4-Dichlorophenol
U082	2,6-Dichlorophenol
U240	2,4-Dichlorophenoxyacetic acid, salts and esters
U083	1,2-Dichloropropane
U084	1,3-Dichloropropene
U085	1,2:3,4-Diepoxybutane (I,T)
U108	1,4-Diethylene dioxide
U086	N, N-Diethylhydrazine
U087	O, O-Diethyl-S-methyl-dithiophosphate
U088	Diethyl phthalate
U089	Diethylstilbestrol
U148	1,2-Dihydro-3,6-pyradizinedione
U090	Dihydrosafrole
U091	3,3'-Dimethoxybenzidine
U092	Dimethylamine (I)
U093	Dimethylaminoazobenzene
U094	7,12-Dimethylbenz(a)anthracene
U095	3,3'-Dimethylbenzidine
U096	alpha, alpha-Dimethylbenzylhydroperoxide (R)
U097	Dimethylcarbamoyl chloride
U098	1,1-Dimethythydrazine
U099	1,2-Dimethylhydrazine
U101	2,4-Dimethylphenol
U102	Dimethyl phthalate
U103	Dimethyl sulfate
U105	2,4-Dinitrotoluene
U106	2,6-Dinitrotoluene
U107	Di-n-octyl phthalate
U108	1,4-Dioxane
U109	1,2-Diphenylhydrazine
U110	Dipropylamine (I)
U111	Di-N-propylnitrosamine
U001	Ethanal (I)
U174	Ethanamine, N-ethyl-N-nitroso-
U067	Ethane, 1,2-dibromo-
U076	Ethane, 1,1-dichloro-
U077	Ethane, 1,2-dichloro-
U114	1,2-Ethanediylbiscarbamodithioic acid
U131	Ethane, 1,1,1,2,2,2-hexachloro-
U024	Ethane, 1,1'-(methylenebis(oxy))bis (2-chloro-)
U003	Ethanenitrile (I,T)
U117	Ethane, 1,1'-oxybis- (I)
U025	Ethane, 1,1'-oxybis(2-chloro-)
U184	Ethane, pentachloro-
U208	Ethane, 1,1,1,2-tetrachloro-
U209	Ethane, 1,1,2,2-tetrachloro-
U218	Ethanethioamide
U227	Ethane, 1,1,2-trichloro-
U247	Ethane,1,1,1,-trichloro-2,2-bis(p-methoxyphenyl)
U043	Ethene, chloro-
U042	Ethene, 2-chlorethoxy-
U078	Ethene, 1,1-dischloro
U079	Ethene, trans-1,2-dichloro-
U210	Ethene, 1,1,2,2-tetrachloro-
U173	Ethanol, 2,2'-(nitrosoimino) bis-
U004	Ethanone, 1-phenyl
U006	Ethanoyl chloride (C,R,T)
U112	Ethyl acetate (I)
U113	Ethyl acrylate (I)
U238	Ethyl carbamate (urethan)
U038	Ethyl 4,4'-dichlorobenzilate
U114	Ethylenebis (dithiocarbamic acid)
U067	Ethylene dibromide
U077	Ethylene dichloride
U115	Ethlene oxide (I,T)
U116	Ethylene thiourea
U117	Ethyl ether (I)
U076	Ethylidene dichloride
U118	Ethylmethacrylate
U119	Ethyl methanesulfonate
U139	Ferric dextran
U120	Fluoranthene
U122	Formaldehyde
U123	Formic acid (C,T)
U124	Furan (I)
U125	2-Furancarboxaldehyde (I)
U147	2,5-Furandione
U213	Furan, tetrahydro- (I)
U125	Furlural (I)
U124	Furfuran (I)
U206	D-Glucopyranose, 2-deoxy-2(3-methyl-3-nitrosouredo)
U126	Glycidylaldehyde
U163	Guanidine, N-nitroso-N-methyl-N'nitro-
U127	Hexachlorobenzene
U128	Hexachlorobutadiene
U129	Hexachlorocyclohexane (gamma isomer)
U130	Hexachlorocyclopentadiene
U131	Hexachloroethane
U132	Hexachlorophene
U243	Hexachloropropene
U133	Hydrazine (R,T)
U086	Hydrazine,1,2-diethyl
U098	Hydrazine,1,1-dimethyl-
U099	Hydrazine,1,2-dimethyl
U109	Hydrazine,1,2-diphenyl
U134	Hydrofluoric acid (C,T)
U134	Hydrogen fluoride (C,T)
U135	Hydrogen sulfide
U096	Hydroperoxide, 1-methyl-1-phenylethyl (R)
U136	Hydroxydimethylarsine oxide
U116	2-Imidazolidinethione
U137	Indeno(1,2,3-cd) pyrene

U139	Iron dextran
U140	Isobutyl alcohol (I,T)
U141	Isosafrole
U142	Kepone
U143	Lasiocarpine
U144	Lead acetate
U145	Lead phosphate
U146	Lead subacetate
U129	Lindane
U147	Maleic anhydride
U148	Maleic hydrazide
U149	Malononitrile
U150	Melphalan
U151	Mercury
U152	Methacrylonitrile (I,T)
U092	Methanamine, N-methyl- (I)
U029	Methane, bromo-
U045	Methane, chloro- (I,T)
U046	Methane, chloromethoxy-
U068	Methane, dibromo-
U080	Methane, dichloro-
U075	Methane, dichlorodifluoro-
U138	Methane, iodo-
U119	Methanesulfonic acid, ethyl ester
U211	Methane, tetrachloro-
U121	Methane, trichlorofluoro-
U153	Methanethiol (I,T)
U225	Methane, tribromo-
U044	Methane, trichloro-
U121	Methane, trichlorofluoro-
U123	Methanoic acid (C,T)
U036	4,7-Methanoindan,1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetahydro-
U154	Methanol (I)
U155	Methapyrilene
U247	Methoxychlor
U154	Methyl alcohol (I)
U029	Methyl bromide
U186	1-Methylbutadiene (I)
U045	Methyl chloride (I,T)
U156	Methyl chlorocarbonate (I,T)
U226	Methylchloroform
U157	3-Methylcholanthrene
U158	4,4'-Methylenebis (2-chloroaniline)
U132	2,2'-Methylenebis (3,4,6-trichlorophenol)
U068	Methylene bromide
U080	Methylene chloride
U122	Methylene oxide
U159	Methyl ethyl ketone (I,T)
U160	Methyl ethyl ketone peroxide (R,T)
U138	Methyl iodide
U161	Methyl isobutyl ketone (I)
U162	Methyl methacrylate (I,T)
U163	N-Methyl-N'-nitro-N-nitrosoguanidine
U161	4-Methyl-2-pentanone (I)
U164	Methylthiouracil
U010	Mitomycin C
U059	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-((3-amino-2,3,6-trideoxy-alpha-L-lyxohexopyranosyl)oxyl)-7,8,9,10,tetrahydro-6,8,11-trihydroxy-1-methoxy-
U165	Naphthalene
U047	Naphthalene, 2-chloro-
U166	1,4-Naphthalenedione
U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl-(1,1'-biphenyl)-4,4'diyl)) bis(azo)bis(5)-amino-4-hydroxy),-tetrasodium salt
U166	1,4,Naphthaquinone
U167	1-Naphthylamine
U168	2-Naphthylamine
U167	alpha-Naphthylamine
U168	beta-Naphthylamine
U026	2-Naphthylamine,N,N'-bis(2-chloromethyl)-
U169	Nitrobenzene (I,T)
U170	p-Nitrobenzene
U171	2-Nitropropane (I)
U172	N-Nitrosodi-n-butylamine
U173	N-Nitrosodiethanolamine
U174	N-Nitrosodiethylamine
U111	N-Nitroso-N-propylamine
U176	N-Nitroso-N-ethylurea
U177	N-Nitroso-N-methylurea
U178	N-Nitroso-N-methylurethane
U179	N-Nitrosopiperidine
U180	N-Nitrosopyrrolidine
U181	5-Nitro-o-toluidine
U193	1,2-Oxathiolane,2,2-dioxide
U058	2H-1,3,2-Oxazaphosphorine,2-(bis(2-chloro-ethyl)amino)tetrahydro-, oxide 2-
U115	Oxirane (I,T)
U041	Oxirane,2-(chloromethyl)-
U182	Paraldehyde
U183	Pentachlorobenzene
U184	Pentachloroethane
U185	Pentachloronitrobenzene
U242	Pentachlorophenol
U186	1,3-Pentadiene (I)
U187	Phenacetin
U188	Phenol
U048	Phenol,2-chloro-
U039	Phenol,4-chloro-3-methyl-
U081	Phenol,2,4-dichloro-
U082	Phenol,2,6-dichloro-
U101	Phenol,2,4-dimethyl-
U170	Phenol,4-nitro-
U242	Phenol, pentachloro-
U212	Phenol,2,3,4,6-tetrachloro-
U230	Phenol,2,4,5-trichloro-
U231	Phenol,2,4,6-trichloro
U137	1,10-(1,2-phenylene) pyrene
U145	Phosphoric acid, Lead salt
U087	Phosphorodithioic acid,0,0-diethyl-, S-methylester
U189	Phosphorus sulfide (R)
U190	Phthalic anhydride
U191	2-Picoline
U192	Pronamide
U194	1-Propanamine, (I,T)
U110	1-Propanamine, N-propyl- (I)
U066	Propane, 1,2-dibromo-3-chloro-
U149	Propanedinitrile
U171	Propane, 2-nitro- (I)
U027	Propane,2,2'oxybis (2-chloro-)
U193	1,3-Propane sultone
U235	1-Propanol,2,3-dibromo-, phosphate (3:1)
U126	1-Propanol,2,3-epoxy
U140	1-Propanol, 2-methyl- (I,T)
U002	2-Propanone (I)
U007	2-Propenamide
U084	Propene,1,3-dichloro-
U243	1-Propene,1,1,2,3,3,3-hexachloro-
U009	2-Propenenitrile

U152	2-Propenenitrile, 2-methyl- (I,T)
U008	2-Propenoic acid (I)
U113	2-Propenoic acid, ethyl ester (I)
U118	2-Propenoic acid, 2-methyl-, ethyl ester
U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)
U233	Propionic acid, 2-(2,4,5,-trichlorophenoxy)-
U194	n-Propylamine (I,T)
U083	Propylene dichloride
U196	Pyridine
U155	Pyridine, 2-(2-(dimethylamino)-2-thenylamino)-
U179	Pyridine, hexahydro-N-nitroso-
U191	Pyridine, 2-methyl
U164	4(1H)-Pyrimidinone,2,3-dihydro-6-methyl-2-thioxo-
U180	Pyrrole, tetrahydro-N-nitroso
U200	Reserpine
U201	Resorcinol
U202	Saccharin and salts
U203	Safrole
U204	Selenious acid
U204	Selenium dioxide
U205	Selenium disulfide (R,T)
U015	L-Serine, diazoacetate (ester)
U233	Silvex
U089	4,4'-Stilbenediol, alpha, alpha'-diethyl-
U206	Streptozotocin
U135	Sulfur hydride
U103	Sulfuric acid, dimethyl ester
U189	Sulfur phosphide (R)
U205	Sulfur selenide (R,T)
U232	2,4,5-T
U207	1,2,4,5,-Tetrachlorobenzene
U208	1,1,1,2-Tetrachloroethane
U209	1,1,2,2-Tetrachloroethane
U210	Tetrachloroethylene
U212	2,3,4,6-Tetrachlorophenol
U213	Tetrahydrofuran (I)
U214	Thallium (I) acetate
U215	Thallium (I) carbonate
U216	Thallium (I) chloride
U217	Thallium (I) nitrate
U218	Thioacetamide
U153	Thiomethanol (I,T)
U219	Thiourea
U244	Thiram
U220	Toluene
U221	Toluenediamine
U223	Toluene diisocyantate (R,T)
U222	O-Toluidine hydrochloride
U011	1H-1,2,4-Triazol-3-amine
U226	1,1,1-Trichloroethane
U227	1,1,2-Trichloroethane
U228	Trichloroethene
U228	Trichloroethylene
U121	Trichloromonofluoromethane
U230	2,4,5-Trichlorophenol
U231	2,4,6-Trichlorophenol
U232	2,4,5-Trichlorophenoxyacetic acid
U234	sym-Trinitrobenzene (R,T)
U182	1,3,5-Trioxane,2,4,5-trimethyl-
U235	Tris(2,3-dibromopropyl) phosphate
U236	Trypan blue
U237	Uracil, 5(bis(2-chloromethyl) amino)
U237	Uracil mustard
U043	Vinyl chloride
U239	Xylene (I)
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxy-benzoyl)oxy)-, methyl ester

CHARLOTTE E. BALDWIN, Secretary

ADOPTED: JULY 11, 1984

RECEIVED BY LRC: July 13, 1984 at 10:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m., EDT. Persons interested in attending this hearing shall notify in writing no later than August 22, 1984 the following office: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Alex Barber, Director, Division of Waste Management

(1) Type and number of entities affected: This regulation affects all owners and operators of hazardous waste management facilities, hazardous waste generators and transporters. The following is a list of the type and number of entities currently registered, permitted, or have interim status in Kentucky: Generators, 226; Small Quantity Generators, 193; Transporters, 101; Storage facilities, 94; Treatment facilities, 63; Disposal facilities, 21.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state revenues from promulgation of this regulation. However, implementation of the entire series of waste management regulations will affect state revenues (see Regulatory Impact Analysis for 401 KAR 39:010 through 39:070). There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.864(3) requires the Cabinet's criteria and list of hazardous waste to be identical to the federal criteria and list. Thus, statute prohibits any alternatives and this regulation contains requirements which are identical to the requirements in 40 CFR 261.30 through 261.33.

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

(a) Necessity of proposed regulation if in conflict:N/A

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

(6) Any additional information or comments: The impact of this regulation has not been analyzed for those requirements which are equivalent to those found in the correctponding federal regulations, 40 CFR 261.30 through 261.33. This proposed amendment does not change any re-

quirement; rather this amendment contains the wording currently incorporated by reference from the federal regulations. Furthermore, those persons who are affected by this regulation currently have the same requirements imposed on them by the U.S. Environmental Protection Agency.

Tiering:
Was tiering applied? Yes. The tiering mechanisms are found in other regulations. Section 5 of 401 KAR 31:010 provides for reduced requirements for small quantity generators as required by KRS 224.869(2). Section 6 of 401 KAR 31:010 delays the compliance date for hazardous wastes recycling facilities due to lack of federal and state funding. 401 KAR 31:060 and 31:070 contain the provisions for delisting a hazardous waste which would exempt the waste from the requirements in this regulation. Section 2 of 401 KAR 30:020 contains the specifications for granting a variance. 401 KAR 32:050 contains the reduced requirements for farmers as required by KRS 224.869(1).

References: Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:160. Appendix on basis for listing hazardous waste.

RELATES TO: KRS 224.830 through 224.877, 224.994
PURSUANT TO: KRS *13A.210, 224.033* [13.082, 13.083, 224.017], 224.864(3)
NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation contains the appendix to this chapter concerning the basis for listing a hazardous waste.

Section 1. Basis for Listing Hazardous Waste. The basis for listing hazardous waste are:

EPA Hazardous Waste No.	Hazardous Constituents for Which Listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2,-trifluoroethane, ortho-dichlorobenzene, trichloro-fluoromethane.
F003	Not Applicable (hereafter N.A.).
F004	Croseols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol,pyridine.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F024	*Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4- trichloro benzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.*
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols,tetrachlorophenols, 2,4-dinitrophenol, cresosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)-pyrene, indenol(1,2,3-cd)pyrene, benz(a)anthracene, dibenz-(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead.
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride,paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride,paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride,hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers, (bis(chloromethyl) ether and bis(2-chloroethyl) ethers), trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene,hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane),trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.

K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloro-ethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2,4-diamine.
K028	1,1,1-trichloroethane, vinyl chloride.
K029	1,2-dichloroethane, 1,1,1-trichlorethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane,1,1,1,2-tetrachloro-ethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b)fluor-anthene, benzo(a)pyrene, indeno(1,2,2-cd) pyrene, benzo(a)-anthracene, dibenzo(a) anthracene, acenaphthalene.
K036	Toluene, phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho-dichlorobenzene
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloro-ethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachloro-benzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichloro-phenol.
K106	Mercury.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 10:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m. Persons interested in attending this public hearing shall contact: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Alex Barber, Director
(1) Type and number of entities affected: This regulation affects all owners and operators of hazardous waste management facilities, hazardous waste generators and transporters. The following is a list of the type and number of entites currently registered, permitted, or have interim status in Kentucky:
Generators: 226
Small Quantity Generators: 193
Transporters: 101
Storage facilities: 94
Treatment facilities: 63
Disposal facilities: 21
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local

revenues: There will be no effect on state revenues from promulgation of this regulation. However, implementation of the entire series of waste management regulations will affect state revenues (see Regulatory Impact Analysis for 401 KAR 39:010 through 39:070). There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.864(3) requires the cabinet's criteria and list of hazardous waste to be identical to the federal criteria and list. Thus, statute prohibits any alternatives and this regulation contains requirements which are identical to the requirements in Appendix VII of 40 CFR Part 261.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The impact of this regulation has not been analyzed for those requirements which are equivalent to those found in the corresponding federal regulation, 40 CFR 261 - Appendix VII. This proposed amendment does not change any requirement; rather this amendment contains the wording currently incorporated by reference from the federal regulation. Furthermore, those persons who are affected by this regulation currently have the same requirements imposed on them by the U.S. Environmental Protection Agency.

Tiering:
Was tiering applied? Yes. The tiering mechanisms are found in other regulations. Section 5 of 401 KAR 31:010 provides for reduced requirements for small quantity generators as required by KRS 224.869(2). Section 6 of 401 KAR 31:010 delays the compliance date for hazardous waste recycling facilities due to lack of federal and state funding. 401 KAR 31:060 and 31:070 contain the provisions for delisting a hazardous waste which would exempt the waste from the requirements in this regulation. Section 2 of 401 KAR 30:020 contains the specifications for granting a variance. 401 KAR 32:050 contains reduced requirements for farmers as required by KRS 224.869(1).

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:170. Appendix on hazardous waste constituents.

RELATES TO: KRS 224.830 through 224.877, 224.994
PURSUANT TO: KRS *13A.210* [13.082, 13.083, 224.017], 224.864(3)
NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation contains the appendix to this chapter concerning the hazardous waste constituents.

Section 1. Hazardous Waste Constituents. The list of hazardous waste constituents for use in interpreting any requirement in this chapter or any other hazardous waste regulation is:

Acetonitrile (Ethanenitrile)
Acetophenone (Ethanone, 1-phenyl)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts (Warfarin)
2-Acetylaminofluorene (Acetamide, N-(9H-fluoren-2-yl)-)
Acetyl chloride (Ethanoyl chloride)
1-Acetyl-2-thiourea (Acetamide, N-(aminothioxomethyl)-)
Acrolein (2-Propenal)
Acrylamide (2-Propenamide)
Acrylonitrile (2-Propenenitrile)
Aflatoxins
Aldrin(1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
Allyl alcohol (2-Propen-1-ol)
Aluminum phosphide
4-Aminobiphenyl ((1,1'-Biphenyl)-4-amine)
6-Amino-1,1a,2,8,8a,8b-Hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methyl-carba-mate azirino(2',3':3,4) pyrrolo(1,2-a)indole-4,7-dione, (ester) (Mitomycin C) (Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-(((amino-carbonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8-amethoxy-5-methyl)
5-(Aminomethyl)-3-isoxazolol (3(2H)-Isoxazolone, 5-(aminomethyl)-)4-Aminopyridine (4-Pyridinamine)
Amitrole (1H-1,2,4-Triazol-3-amine)
Aniline (Benzenamine)
Antimony and compounds, N.O.S.*
Aramite (Sulfurous acid, 2-chloroethyl-,2-(4-(1,1-dimethylethyl)phenoxy)-1-methylethyl ester)
Arsenic and compounds, N.O.S.*
Arsenic acid (Orthoarsenic acid)
Arsenic pentoxide (Arsenic (V) oxide)
Arsenic trioxide (Arsenic (III) oxide)
Auramine (Benzenamine, 4,4'-carbonimidoylbis(N,N-Dimethyl-monohydrochloride)
Azaserine (L-Serine, diazoacetate (ester))
Barium and compounds, N.O.S.*
Barium cyanide
Benz(c)acridine (3,4-Benzacridine)
Benz(a)anthracene (1,2-Benzanthracene)
Benzene (Cyclohexatriene)
Benzenearsonic acid (Arsonic acid, phenyl-)
Benzene, dichloromethyl-(Benzal chloride)
Benzenethiol (Thiophenol)
Benzidine ((1,1'-Biphenyl)-4,4'diamine)
Benzo(b)fluoranthene (2,3-Benzofluoranthene)
Benzo(j)fluoranthene (7,8-Benzofluoranthene)
Benzo(a)pyrene (3,4-Benzopyrene)
p-Benzoquinone (1,4-Cyclohexadienedione)
Benzotrichloride (Benzene, trichloromethyl-)
Benzyl chloride (Benzene, (chloromethyl)-)
Beryllium and compounds, N.O.S.*
Bis(2-chloroethoxy)methane (Ethane,1,1'-(methylenebis(oxy))bis(2-chloro-))
Bis(2-chlorethyl) ether (Ethane,1,1'-oxybis(2-chloro-))
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlor naphazine)
Bis(2-chloroisopropyl) ether (Propane,2,2'-oxybis(2-chloro-)
Bis(chloromethyl) ether (Methane, oxybis(chloro-))
Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2)ethylhexyl) ester)
Bromoacetone (2-Propanone, 1-Bromo-)
Bromomethane (Methyl bromide)
4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)

Brucine (Strychnidin-10-one,2,3-dimethoxy-)
2-Butanone peroxide (Methyl ethyl ketone, peroxide)
Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butylphenylmethyl ester)
2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol,2,4-dinitro-6-(1-methylpropyl)-)
Cadmium and compounds N.O.S.*
Calcium chromate (Chromic acid, calcium salt)
Calcium cyanide
Carbon disulfide (Carbon bisulfide)
Carbon oxyfluoride (Carbonyl fluoride)
Chloral (Acetaldehyde, trichloro-)
Chlorambucil (Butanoic acid, 4-(bis(2-chloroethyl)amino)benzene-)
Chlordane (alpha and gamma isomers) (4,7-Methanoindan,1,2,4,5,6,7,8,8-octachloro-3,4,7,7a-tetrahydro-) (alpha and gamma isomers)
Chlorinated benzenes, N.O.S.*
Chlorinated ethane, N.O.S.*
Chlorinated fluorocarbons, N.O.S.*
Chlorinated naphthalene, N.O.S.*
Chlorinated phenol, N.O.S.*
Chloroacetaldehyde (Acetaldehyde, chloro-)
Chloroalkyl ethers, N.O.S.*
p-Chloroaniline (Benzenamine 4-chloro-)
Chlorobenzene (Benzene, chloro-)
Chlorobenzilate (Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alphahydroxy-ethyl ester)
2-Chloro-1,3-butadiene (chloroprene)
p-Chloro-in-cresol (Phenol, 4-chloro-3-methyl)
1-Chloro-2,3-epoxypropane (Oxirane, 2-chloroethoxy)-)
2-Chloroethyl vinyl ether (Ethene, (2-chloroethyoxy)-)
Chloroform (Methane, trichloro-)
Chloromethane (Methyl chloride)
Chloromethyl methyl ether (Methane, chloromethoxy-)
2-Chloronaphthalene (Naphthalene, betachloro-)
2-Chlorophenol (Phenol,o-chloro-)
1-(o-Chlorophenyl)thiourea (Thiourea, (2-chlorophenyl)-)
3-Chloropropene (allyl chloride)
3-Chloropropionitrile (Propanenitrile, 3-chloro-)
Chromium and compounds, N.O.S.*
Chrysene (1,2-Benzphenanthrene)
Citrus red No. 2 (2-Naphthol, 1-((2,5-dimethoxyphenyl)axo)-)
Coal tars
Copper cyanide
Creosote (Creosote, wood)
Cresols (Cresylic acid) (Phenol, methyl-)
Crotonaldehyde (2-Butenal)
Cyanides (soluble salts and complexes), N.O.S.*
Cyanogen (Ethanedinitrile)
Cyanogen bromide (Bromine cyanide)
Cyanogen chloride (Chlorine cyanide)
Cyansin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)
2-Cyclohexyl-4,6-dinitrophenol (Phenol, 2-cyclohexyl-4,6-dinitro-)
Cyclophosphamide (2H-1,3,2,-Oxazaphosphorine, (bis(2-chloroethyl)amino)-tetrahydro-,2-oxide)
Daunomycin (5,12-Naphthacenedione, (8s-cis)-8-actyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)
DDD (Cichlorodiphenyldichloroethane) (Ethane,1,1-dichloro-2,2-bis(p-chlorophenyl)-)
DDE (Ethylene,1,1-dichloro-2,2-bis(4-chlorophenyl)-)
DDT (Dichlorodiphenyltrichloroethane) (Ethane,1,1,1-trichloro-2,2-bis(p-chlorophenyl)-)
Diallate (S-(2,3-dichloroallyl) diisopropylthiocarbamate
Dibenz(a,h)acridine (1,2,5,6-Dibenzacridine)
Dibenz(a,j)acridine (1,2,7,8-Dibenzacridine)
Dibenz(a,h)anthracene (1,2,5,6-Dibenzanthracene)
7H-Dibenzo(c,g)carbazole (3,4,5,6-Dibenzcarbazole)
Dibenzo(a,e)pyrene (1,2,4,5-Dibenzpyrene)
Dibenso(a,h)pyrene (1,2,5,6-Dibenzpyrene)
Dibenzo(a,i)pyrene (1,2,7,8-Dibenzpyrene)
1,2-Dibromo-3-chloropropane (Propane,1,2-dibromo-3-chloro-)
1,2-Dibromoethane (Ethylene dibromide)
Dibromomethane (Methylene bromide)
Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)
o-Dichlorobenzene (Benzene, 1,2-dichloro-)
m-Dichlorobenzene (Benzene, 1,3-dichloro-)
p-Dichlorobenzene (Benzene, 1,4-dichloro-)
Dichlorobenzene, N.O.S.* (Benzene, dichloro-, N.O.S.*
3,3'-Dichlorobenzidine ((1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-)
1,4-Dichloro-2-butene (2-Butene,1,4-dichloro-)
Dichlorodifluoromethane (Methane, dichlorodifluoro-)
1,1-Dichloroethane (Ethylidene dichloride)
1,2-Dichloroethane (Ethylene dichloride)
trans-1,2-Dichloroethene (1,2-Dichloroethylene)
Dichloroethylene, N.O.S.* (Ethene, dichloro- N.O.S.*
Dichloromethane (Methylene chloride)
2,4-Dichlorophenol (Phenol, 2,4-dichloro-)
2,6-Dichlorophenol (Phenol, 2,6-dichloro-)
2,4-Dichlorophenoxyacetic acid (2,4-D), salts and esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)
Dichlorophenylarsine (Phenyl dichloroarsine)
Dichloropropane, N.O.S.* (Propane, dichloro- N.O.S.*)
1,2-Dichloropropane (Propylene dichloride)
Dichloropropanol, N.O.S.* (Propanol dichloro-, N.O.S.*)
Dichloropropene, N.O.S.* (Propene, dichloro-, N.O.S.*)
1,3-Dichloropropene (1-Propene, 1,3-dichloro-)
Dieldrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
1,2:3,4-Diepoxybutane (2,2'-Bioxirane)
Diethylarsine (Arsine, diethyl-)
N,N-Diethylhydrazine (Hydrazine, 1,2-diethyl)
O,O-diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)
Diethyl phthlate (1,2-Benzenedicarboxylic acid, diethyl ester)
O,O-Diethyl O-2-pyrazinyl phosphorothioate (Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Diethylstilbesterol (4,4'-Stilbenediol, alpha, alpha-diethyl, bis(dihydrogen phosphate, (E)-)
Dihydrosafrole (Benzene, 1,2-methylenedioxy-4-propyl-)
3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol (1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-)
Diisopropylfluorophosphate (DFP) (Phosphorofluoridic acid, bis(1-methylethyl) ester)
Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester
3,3'-Dimethoxybenzidine ((1,1'-Biphenyl)-4,4'diamine, 3,3'-dimethoxy-)
p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo)-)
7,12-Dimethylbenz(a)anthracene (1,2-Benzanthracene, 7,12-dimethyl-)
3,3'-Dimethylbenzidine ((1,1'-biphenyl)-4,4'-diamine, 3,3'-dimethyl-)

Dimethylcarbamoyl chloride (carbamoyl chloride, dimethyl-)
1,1-Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)
1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-((methylamino) carbonyl)oxime (Thiofanox)
alpha, alpha-Dimethylphenethylamine (Ethanamine, 1,1-dimethyl-2-phenyl-)
2,4-Dimethylphenol (Phenol,2,4-dimethyl-)
Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)
Dimethyl sulfate (Sulfuric acid, dimethyl ester)
Dinitrobenzene, N.O.S.* (Benzene, dinitro-,N.O.S.*)
4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)
2,4-Dinitrophenol (Phenol, 2,4-dinitro-)
2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)
2,6-Dinitrotoluene (Benzene, 1-methyl-2,6-dinitro-)
Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)
1,4-Dioxane (1,4-Diethylene oxide)
Diphenylamine (Benzenamine, N-phenyl-)
1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
Di-n-propylnitrosamine (N-Nitroso-di-n-propylamine)
Disulfoton (O,O-diethyl S-(ethylthio)ethyl)phosphorodithioate
2,4-Dithiobiuret (Thioimidodicarbonic diamide)
Endosulfan (5-Norbornene, 2,3-dimethanol, 1,4,5,6,7,7-hexachloro-, cyclic sulfite)
Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro- endo,endò-1,4:5,8-dimethanonaphthalene, and metabolites)
Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)
Ethyl cyanide (propanenitril)
Ethylenebisdithiocarbamic acid, salts and esters (1,2-Ethanediylbiscarbamodithioic acid, salts and esters)
Ethylenecimine (Aziridine)
Ethylene oxide (Oxirane)
Ethylenethiourea (2-Imidazolidinethione)
Ethyl methacrylate (2-Propenoic acid, 2-methyl-,ethyl ester)
Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)
Fluoranthene (Benzo(j,k)fluorene)
Fluorine
2-Fluoroacetamide (Acetamide, 2-fluoro-)
Fluoroacetic acid, sodium salt (Acetic acid, fluoro-, sodium salt)
Formaldehyde (methylene oxide)
Formic acid (Methanoic acid)
Glycidylaldehyde (1-Propanol-2,3-epoxy)
Halomethane, N.O.S.*
Heptachlor (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)
Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-, alpha, beta, and gamma isomers)
Hexachlorobenzene (Benzene, hexachloro-)
Hexachlorobutadiene (1,3-Butadiene, 1,1,2,3,4,4-hexachloro-)
Hexachlorocyclohexane (all isomers) (Lindane and isomers)
Hexachlorocyclopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)
Hexachloroethane (Ethane, 1,1,1,2,2,2-hexachloro-)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene (Hexachlorohexahydro-endo,endo-dimethanonaphthalene)
Hexachlorophene (2,2'-Methylenebis(3,4,6-trichlorophenol))
Hexachloropropene (1-Propene, 1,1,2,3,3,3-hexachloro-)
Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)
Hydrazine (Diamine)
Hydrocyanic acid (Hydrogen cyanide)
Hydrofluoric acid (Hydrogen fluoride)
Hydrogen sulfide (Sulfur hydride)
Hydroxydimethylarsine oxide (Cacodylic acid)
Indeno(1,2,3-cd)pyrene (1,10-(1,2-phenylene)pyrene)
Iodomethane (Methyl iodide)
Iron dextran (Ferric dextran)
Isocyanic acid, methyl ester (Methyl isocyanate)
Isobutyl alcohol (1-Propanol, 2-methyl-)
Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Kepone (Decachlorooctahydro-1,3,4-Methano-2H-cyclobuta(cd)pentalen-2-one)
Lasiocarpine (2-Butenoic acid, 2-methyl-,7-((2,3-dihydroxy-2-(1)1-methoxyethyl)-3-methyl-1-oxobutoxy) methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester
Lead and compounds, N.O.S.*
Lead acetate (Acetic acid, lead salt)
Lead phosphate (Phosphoric acid, lead salt)
Lead subacetate (Lead, bis(acetato-O)tetrahydroxytri-)
Maleic anhydride (2,5-Furandione)
Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)
Malononitrile (Propanedinitrile)
Melphalan (Alanine, 3-(p-bis)2-chloroethyl)amino) phenyl-,L-)
Mercury fulminate (Fulminic acid, mercury salt)
Mercury and compounds, N.O.S.*
Methacrylonitrile (2-Propenenitrile, 2-methyl-)
Methanethiol (Thiomethanol)
Methapyrilene (Pyridine, 2-((2-dimethylamino)ethyl)-2-thenylamino-)
Metholmyl (Acetimidic acid, N-((methylcarbamoyl)oxy) thio-,methyl ester
Methoxychlor (Ethane, 1,1,1-trichloro-2,2'-bis(p-methoxyphenyl)-)
2-Methylaziridine (1,2-Propylenimine)
3-Methylcholanthrene (Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-)
Methyl chlorocarbonate (Carbonochloridic acid, methyl ester)
4,4'-Methylenebis(2-chloroaniline) (Benzenamine,4,4'-methylenebis-(2-chloro-)
Methyl ethyl ketone (MEK) (2-Butanone)
Methyl hydrazine (Hydrazine, methyl-)
2-Methyllactonitrile (Propanenitrile, 2-hydroxy-2-methyl-)
Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)
Methyl methanesulfonate (Methanesulfonic acid, methyl ester)
2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime (Propanal, 2-methyl-2-(methylthio)-,O-((methylamino)carbonyl)oxime)
N-Methyl-N'-nitro-N-nitrosoguanidine (Guanidine, N-nitroso-N-methyl-N'-nitro-)
Methyl parathion (O-O-dimethyl O-(4-nitrophenyl) phosophorothioate)
Methylthiouracil (4-1H-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)
Mustard gas (Sulfide, bis(2-chloroethyl)-)
Naphthalene

1,4-Naphthoquinone (1,4-Naphthalenedione)
1-Naphthylamine (alpha-Naphthylamine)
2-Naphthylamine (beta-Naphthylamine)
1-Nanphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)
Nickel and compounds, N.O.S.*
Nickel carbonyl (Nickel tetracarbonyl)
Nickel cyanide (Nickel (II) cyanide)
Nicotine and salts (Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)
Nitric oxide (Nitrogen (II) oxide)
p-Nitroaniline (Benzenamine, 4-nitro-)
Nitrobenzine (Benzene, nitro-)
Nitrogen dioxide (Nitrogen (IV) oxide)
Nitrogen mustard and hydrochloride salt (Ethanamine,2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitrogen mustard N-Oxide and hydrochlororide salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitroglycerine (1,2,3-Propanetriol, trinitrate)
4-Nitrophenol (Phenol, 4-nitro-)
4-Nitroquinoline-1-oxide (Quinoline, 4-nitro-oxide-)
Nitrosamine, N.O.S.*
N-Nitrosodi-n-butylamine (1-Butanamine, N-butyl-N-nitroso-)
N-Nitrosodiethanoamine (Ethanol, 2,2'-(nitrosoimino)bis-)
N-Nitrosodiethylamine (Ethanamine, N-ethyl-N-nitroso-)
N-Nitrosodimethylamine (Dimethylnitrosamine)
N-Nitroso-N-ethylurea (Cabamide, N-ethyl-N-nitroso-)
N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)
N-Nitroso-N-methylurea (carbamide, N-methyl-N-nitroso-)
N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)
N-Nitrosomethylvinylamine (Ethenamine, N-methyl-N-nitroso-)
N-Nitrosomorpholine (Morpholine, N-nitroso-)
N-Nitrosonornicotine (Nornicotine, N-nitroso-)
N-Nitrosopiperidine (Pyridine, hexahydro-, N-nitroso-)
Nitrosopyrrolidine (Pyrrole, tetrahydro-, N-nitroso-)
N-Nitrososarcosine (Sarcosine, N-nitroso-)
5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)
Octamethylpyrophosphoramide (Diphosphoramide, octamethyl-)
Osmium tetroxide (Osmium (VIII) oxide)
7-Oxabicyclo(2,2,1)heptane-2,3-dicarboxylic acid (Endothal)
Paraldehyde (1,3,5--Trioxane, 2,4,6-trimethyl-)
Parathion (Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester)
Pentachlorobenzene (Benzene, pentachloro-)
Pentachloroethane (Ethane, pentachloro-)
Pentachloronitrobenzene (PCNB) (Benzene, pentachloronitro-)
Pentachlorophenol (Phenol, pentachloro-)
Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)
Phenol (Benzene, hydroxy-)
Phenylenediamine (Benzenediamine)
Phenylmercury acetate (Mercury, acetatophenyl-)
N-Phenylthiourea (Thiourea, phenyl-)
Phosgene (Carbonyl chloride)
Phospine (Hydrogen phosphide)
Phosphorodithioic acid, O,O-dimethyl O-(p-((dimethylamino)sulfonyl)phenyl) ester (Famphur)
Phthalic acid esters, N.O.S.* (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.*)
Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)
2-Picoline (Pyridine,2-methyl-)
Polychlorinated biphenyl, N.O.S.*
Potassium cyanide
Potassium silver cyanide (Argentate(1-),dicyano-,potassium)
Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl) benzamide)
1,3-Propane sultone (1,2-Oxathiolane, 2,2-dioxide)
n-Propylamine (1-Propanamine)
Propylthiouracil (Undecamethylenediamine, N,N'-bis(2-chlorobenzyl)-, dihydrochloride) 2-Propyn-1-ol (propargyl alcohol)
Pyridine
Reserpine (Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-,methyl ester
Resorcinol (1,3-Benzenediol)
Saccharin and salts (1,2-Benzoisothiazolin-3-one, 1,1-dioxide, and salts)
Safrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Selenious acid (Selenium dioxide)
Selenium and compounds, N.O.S.*
Selenium sulfide (Sulfur selenide)
Selenourea (Carbamimidoselenoic acid)
Silver and compounds, N.O.S.*
Silver cyanide
Sodium cyanide
Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)
Strontium sulfide
Strychnine and salts (Strychnidin-10-one, and salts)
1,2,4,5-Tetrachlorobenzene (Benzene, 1,2,4,5-tetrachloro-)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)
Tetrachloroethane, N.O.S.* (Ethane, tetrachloro-, N.O.S.*)
1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)
1,1,2,2-Tetrachlorethane (Ethane, 1,1,1-2-tetrachloro-)
Tetrachloroethylene (Ethene, 1,1,2,2-tetrachloro-)
Tetrachloromethane (Carbon tetrachloride)
2,3,4,6-Tetrachlorophenol (Phenol, 2,3,4,6-tetrachloro-)
Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)
Tetraethyl lead (Plumbane, tetraethyl-)
Tetraethylpyrophosphate (Pyrophosphoric acid, tetraethyl ester)
Tetranitromethane (Methane, tetranitro-)
Thallium and compounds, N.O.S.*
Thallic oxide (Thallium (III) oxide)
Thallium (I) acetate (Acetic acid, thallium (I) salt)
Thallium (I) carbonate (Carbonic acid, dithallium (I) salt)
Thallium (I) chloride
Thallium (I) nitrate (Nitric acid, thallium (I) salt)
Thallium selenite
Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)
Thioacetamide (Ethanethioamide)
Thiosemicarbazide (Hydrazinecarbothioamide)
Thiourea (Carbamide thio-)
Thiuram (Bis(dimethylthiocarbamoyl) disulfide)
Toluene (Benzene, methyl-)
Toluenediamine (Diaminotoluene)
o-Toluidine hydrochloride (Benzenamine, 2-methyl-, hydrochloride)
Tolylene diisocyanate (Benzene, 1,3-diisocyanatomethyl-)
Toxaphene (Camphene, octachloro-)

Tribromomethane (Bromoform)
1,2,4-Trichlorobenzene (Benzene,1,2,4-trichloro-)
1,1,1-Trichloroethane (Methyl chloroform)
1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)
Trichloroethene (Trichloroethylene)
Trichloromethanethiol (Methanethiol, trichloro-)
Trichloromonofluoromethane (Methane, trichlorofluoro-)
2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)
2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) (Acetic acid, 2,4,5-trichlorophenoxy-)
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex) (Propionoic acid, 2-(2,4,5-trichlorophenoxy)-)
Trichloropropane, N.O.S.* (Propane, trichloro-, N.O.S.*)
1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)
O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester) sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)
Tris(1-azridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-)
Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)
Trypan blue (2,7-Naphthalenedisulfonic acid, (3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(5-amino-4-hydroxy-, tetrasodium salt)
Uracil mustard (Uracil 5-(bis(2-chloroethyl)amino)-)
Vanadic acid, ammonium salt (ammonium vanadate)
Vanadium pentoxide (Vanadium (V) oxide)
Vinyl chloride (Ethene, chloro-)
Zinc cyanide
Zine phosphide

*The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 10:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984, at 10 a.m. Persons interested in attending this public hearing shall contact: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601. The written comment period will close at 4:30 p.m. on August 22, 1984.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 32:020. Manifest system.

RELATES TO: KRS 224.071, *224.033, 224.830 through 224.877, 224.994* [224.835, 224.864]
PURSUANT TO: KRS *13A.210* [13.082, 224.017], 224.033, 224.864
NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promulgate regulations to establish standards for the generation of hazardous wastes. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes the general requirement and procedures involving the use of the manifest system by generators of hazardous waste.

Section 1. General Requirements. (1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest, *contained in Appendix A of 401 KAR 32:100, and if necessary, Appendix B of 401 KAR 32:100, according to the instructions included in 401 KAR 32:100* [before transporting the waste off-site].

(2) A generator must designate on the manifest the facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one (1) alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

Section 2. *Acquisition of Manifests* [Required Information]. (1) *If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator must use that manifest.* [The manifest must contain all of the following information:]

[(a) A manifest document number;]

[(b) The generator's name, mailing address, telephone number, and identification number;]

[(c) The name and identification number of each transporter;]

[(d) The name, address, and identification number of the designated facility and an alternate facility, if any;]

[(e) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203;]

[(f) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.]

(2) *If the consignment state does not supply the manifest, but the state in which the generator is located (generator state) supplies the manifest and requires its use, then the generator must use that state's manifest.* [The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation, the U.S. Environmental Protection Agency, and the Kentucky Natural Resources and Environmental Protection Cabinet."]

(3) If neither the generator state nor the consignment state supplies the manifest, then the generator may obtain the manifest from any source.

Section 3. Number of Copies. The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one (1) copy each for their records and another copy to be returned by the operator of the designated facility to the generator.

Section 4. Use of the Manifest. [(1) The use of the manifest shall be required on the effective date of this chapter and this regulation.]

[(2) The cabinet's manifest form, or a generator's manifest form which meets the requirements of this regulation, shall be used for intra-state shipments of hazardous waste and for shipments originating outside the state but destined for treatment, storage or disposal within Ken-

tucky. For shipments of hazardous waste originating within Kentucky but bound for treatment, storage or disposal outside the state, the receiving state's manifest may be used providing that it meets the U.S. Environmental Protection Agency requirements.]

(1) [(3)] The generator must:

(a) Sign the manifest certification by hand; and

(b) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(c) Retain one (1) copy, *in accordance with Section 1(1) of 401 KAR 32:040.*

(2) [(4)] The generator must give the transporter the remaining copies of the manifest.

(3) [(5)] For shipment of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(4) [(6)] For rail shipments of hazardous waste within the United States which originate at the site of generation in Kentucky, the generator must send at least three (3) copies of the manifest dated and signed in accordance with this section to:

(a) The next non-rail transporter, if any; or

(b) The designated facility if transported solely by rail; or

(c) The last rail transporter to handle the waste in the United States if exported by rail.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 10:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m. Persons interested in attending this public hearing shall contact: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601. The written comment period will close at 4:30 p.m. on August 22, 1984.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 32:050. Special conditions.

RELATES TO: KRS 224.071, *224.830 through 224.877, 224.994* [224.835, 224.864, 224.869(1)]

PURSUANT TO: KRS *13A.210* [13.082, 224.017], 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864 requires the Natural Resources and Environmental Protection Cabinet to promgulate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes special conditions for generators who export or import hazardous waste. This regulation exempts farmers from certain requirements.

Section 1. International Shipments. (1) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this regulation.

(2) When shipping hazardous waste outside the United States the generator must:

(a) Notify the cabinet and the U.S. Environmental Protection Agency in writing four (4) weeks before the initial shipment of hazardous waste to each country in each calendar year.

1. The waste must be identified by its hazardous waste identification number and its U.S. Department of Transportation shipping description;

2. The name and address of the foreign consignee must be included in this notice;

3. These notices must be sent to: Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A-107), United States Environmental Protection Agency, Washington, D.C. 20460, and the Natural Resources and Environmental Protection Cabinet, Frankfort, Kentucky 40601.

(b) Require the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

(c) Meet the requirements under Section 2(1) of 401 KAR 32:020 for the manifest, except that:

1. In place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used; and

2. The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(d) The generator may obtain the manifest form from any source.

(3) A generator must file an exception report, if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter; or

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(4) When importing hazardous waste, a person must meet all requirements of Section 2(1) of 401 KAR 32:020 for the manifest except that:

(a) In place of the generator's name, address and identification number, the name and address of the foreign generator and the importer's name, address and identification number must be used; and

(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(5) A person who imports hazardous waste may obtain the manifest form from any source.

Section 2. Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter or other standards in 401 KAR Chapters 34 and 38, and 401 KAR 35:010 for those wastes provided he triple rinses each emptied pesticide container in accordance with 401 KAR 31:010, Section 7, and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984

FILED WITH LRC: July 13, 1984 10:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m. Persons interested in attending this public hearing shall contact: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601. The written comment period will close at 4:30 p.m. on August 22, 1984.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS [13.082,] 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet for the issuance for exploration approval or a permit.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350, 405 KAR 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210; or 405 KAR 18:100, 405 KAR 18:060, Section 9, and 405 KAR 18:220.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(10) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS

Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "Coal processing plant" means a collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities.

(18) "Coal processing waste" means earth materials which are separated from product coal, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(19) "Collateral bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(21) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(24) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(25) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (PL 95-87).

(26) "Day" means calendar day unless otherwise specified to be a working day.

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

(35) "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

(36) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(37) "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(38) "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87, 91 Stat. 445 (30 USC Section 1201 et. seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(39) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(40) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(41) "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

(42) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(43) "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(44) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(45) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(46) "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(47) "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(48) "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(50) "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(51) "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects, or sites for which historic designation is pending.

(52) "Historically used for cropland" means that: (a) lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 above shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a), other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(53) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(54) "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(55) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(56) "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(57) "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(58) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(59) "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(60) "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(61) "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(62) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(63) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(65) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(66) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(68) "Noxious plants" means species classified under Kentucky law as noxious plants.

(69) "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(70) "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(71) "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(72) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(75) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(76) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by

the cabinet and other appropriate Kentucky and federal agencies.

(79) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(81) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(82) "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(83) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(84) "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

(85) "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(86) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(87) "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more *of any class of voting stock* [interest] of the applicant.

(88) "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(89) "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(90) "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(91) "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(92) "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(93) "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(94) "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(95) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(96) "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(97) "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(98) "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(99) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(100) "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(101) "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(102) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(103) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(104) "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(105) "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(106) "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(107) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(108) "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(109) "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(110) "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(111) "Spoil" means overburden that has been removed during surface coal mining operations.

(112) "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(113) "Steep slope" means any slope of more than twenty (20) degrees.

(114) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(115) "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(116) "Surety bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(117) "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(118) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months*; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration.* Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(119) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(120) "Suspended solids" or nonfilterable residue, expressed as miligrams per liter, means organic or inorganic materials carried or held in suspension in water which are

retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(121) "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(122) "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(123) "Topsoil" means the A soil horizon layer of the three (3) major soil horizons.

(124) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(125) "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(126) "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(127) "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(128) "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(129) "Undeveloped land or no current use or land management" means land that is undeveloped or, if previoulsy developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(130) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(131) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(132) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(133) "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (PL 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac—acre
CFR—Code of Federal Regulations
dB—decibels
FDIC—Federal Deposit Insurance Corporation
FSLIC—Federal Savings and Loan Insurance Corporation
Hz—hertz
KAR—Kentucky Administrative Regulations
KRS—Kentucky Revised Statutes
l—liter
mg—milligram
MRP—mining and reclamation plan
MSHA—Mine Safety and Health Administration
NPDES—National Pollutant Discharge Elimination System
OSM—Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS—Soil Conservation Service
SMCRA—Surface Mining Control and Reclamation Act of 1977, PL 95-87
USDA—United States Department of Agriculture
USDI—United States Department of the Interior
U.S. EPA—United States Environmental Protection Agency
USGS—United States Geological Survey

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 28, 1984 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: There are three types of entities that will be affected by these amendments, the coal mining industry, other mining industries that may remove coal incidental to the extraction of other minerals, and the general public that may be affected by these mining operations. There are approximately 3,000 coal mining operations in the Commonwealth. There are

very few, if any, operations that will qualify for the incidental coal extraction exemption. The general public that would be affected is the population of the coal producing counties. There are two distince amendments being made to this regulation. One is to include the incidental coal extraction exemption established by the 1984 General Assembly. The impacts of this change will be discussed in the regulatory impact analysis for 405 KAR 7:030. That discussion is incorporated herein by reference. The other change is to the definition of principal shareholder, the impacts of which are discussed below.

(a) Direct and indirect costs or savings to those affected:

1. First year: Principal shareholders of the applicant must be identified in applications for mining permits. This change to the definition of principal shareholder may in some cases change the lists of principal shareholders that are contained in applications and may in some cases affect whether a permit can be issued due to the violation history of the applicant. However, the change will have minimal impact on the industry and general public as a whole.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: In some cases, the list of principal shareholders in permit applications will be different, but the paperwork impacts of this change is minimal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change was implemented by the 1984 General Assembly by amendment to KRS Chapter 350. Therefore, no alternatives were considered.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

A fiscal note is not required for this regulation because it will have no impact on local government.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:030. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465

PURSUANT TO: KRS [13.082,] 350.020, 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation designates Title 405, Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which Title 405, Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the cabinet over coal exploration and surface coal mining and reclamation operations and sets forth certain non-jurisdictional activities.

Section 1. Applicability. Title 405, Chapters 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except any surface coal mining and reclamation operation which, together with any related operation, has or will have an affected area of two (2) acres or less in which case the provisons of Title 405, Chapter 26 shall apply.

(1) For purposes of this regulation, where a segment of a road is used for access or coal haulage by more than one (1) surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two (2) or more operations which are deemed related pusuant to subsection (2) of this section shall be considered as one (1) operation for the purposes of this subsection.

(2) Except as provided in subsection (3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

(a) Operations shall be deemed physically related if drainage for both operations flows into the same watershed at or before a point within five (5) aerial miles of both operations.

(b) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

1. The same person;

2. Two (2) or more persons, one (1) of whom controls, is under common control with, or is controlled by the other; or

3. Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(c) For purposes of this paragraph, "control" means: ownership of fifty (50) percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one (1) person the ability in fact or law to direct what the other does; or any relationship which gives one (1) person express or implied authority to determine the manner in which coal at differenct sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of subsections (2) of this section, the cabinet may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to Section 3 of this regulation, that two (2) or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in subsection (2)(b) of this section, the cabinet concludes in writing that the operations are not of the type which SMCRA was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of KRS Chapter 350 or Title 405, Chapters 7 through 24.

(4) The exemption provided by this section applies only to operations with an affected area of less than two (2) acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

Section 2. Coal Extraction Incidental to Government Financed Construction. (1) (a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and Title 405, Chapters 7 through 24, except subsection (2) of this section shall apply.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this subsection shall not proceed until a permit has been obtained from the cabinet.

(c) Reclamation of abandoned mined lands funded under Title IV of SMCRA, shall be deemed government-financed construction.

(2) Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 3. Exemptions. (1) The cabinet may on its own initiative and shall, within a reasonable time of a request from any person who intends to extract coal, make a written determination whether the operation is exempt from Title 405, Chapters 7 through 24. Where appropriate, exemptions shall be recognized for:

(a) The extraction of coal by an landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of or intent to extract 250 tons of coal or less by any person by surface coal mining operations within twelve (12) successive calendar months;

(c) The extration of coal as an incidental part of federal, state or local govenment-financed highway or other construction;

(d) Surface coal mining and reclamation operations of two (2) acres or less covered by Title 405, Chapter 26 *; and* [.]

(e) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for purposes of commercial use or sale. OSM guidelines on implementing this exemption published at 49 CFR 19338 are hereby incorporated by reference. Copies may be obtained from the department.

(2) The cabinet shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the cabinet shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption.

(3) If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior the date of the reversal.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 28, 1984 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: The number of entities that may quality for this new exemption is unknown, but the cabinet expects that very few, if any, operations will be exempted by this new provision. If any exemptions are granted, the general public in the area of the exempted operations will be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: If any mining operations are granted exemptions under this new provision, the savings to the operation would be substantial because the operation would avoid the costs of permitting and reclamation and reclamation fees under the surface mining regulations. In such cases, the general public may suffer the effects of increase environmental degradation from the exempted operation.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Operations extracting coal under this exemption will have a competitive advantage over other coal mining operations due to the decreased costs described above.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will be substantially reduced or eliminated for any operation exempted under this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be some additional costs to the agency in reviewing and processing requests for exemption under this new provision. However, the increased costs are expected to be minimal.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork invovled with processing requests for exemptions but this should have minimal impact on the agency.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available to the agency because this exemption was established by he 1984 General Assembly. OSM is intending to promulgate federal regulations governing the granting of these types of exemption. Pending final promulgation of the federal regulation, OSM has issued guidelines to be utilized in applying the exemption and these are incorporated into the state regulation by reference. Once the federal regulations are made final, any necessary amendments to the state regulation will be made at that time.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes

A fiscal note is not required for this regulation because it will have no impact on local government.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:020. Contemporaneous reclamation.

RELATES TO: KRS 350.062, 350.093, 350.100, 350.110, 350.405, 350.410, 350.435, 350.450, 350.465

PURSUANT TO: KRS [13.082,] 350.028, 350.093, 350.100, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, comtemporaneous with mining operations.

Section 1. General. Reclamation operations, including but not limited to, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this regulation.

Section 2. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria set forth in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this regulation. The approved backfilling and grading plan may specify time and distance criteria less restrictive than those set forth in this regulation when the permittee has demonstrated through detailed written analysis in the permit application that such other criteria are essential to the proposed mining and reclamation operations, and the cabinet has determined that use of such criteria will not likely cause adverse environmental impacts. As used in this section, "initial surface disturbance" means the initial excavation for the purpose of removal of topsoil or overburden.

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(2) Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Auger holes shall be sealed as required by 405 KAR 20:030. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1500 linear feet.

(3) Contour mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial surface disturbance at that location. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(4) Multiple-seam contour mining. When overlapping multiple cuts producing a benched highwall are made to remove more than one (1) coal seam at a given location, backfilling and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1500 feet. Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation.

(5) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within the time frame specified in subsection (3) or (4) of this section as appropriate. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as required in subsection (2) of this section.

(6) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area.

(7) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days only when specifically authorized in the approved plans for topsoil handling and revegetation or when authorized pursuant to Sections 4 or 5 of this regulation.

Section 4. Deferments. (1) The *cabinet* [deparment] may allow a permittee to defer *the time criteria for* coal

removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that said deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control.

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7 and 405 KAR 20:020[, and other mining operations pursuant to KRS 350.080].

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be in the form prescribed by the cabinet. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment.

(a) Application for a deferment pursuant to paragraph (a) of subsection (1) for adverse conditions shall be made in writing and shall include documentation of the adverse conditions beyond the operator's control and demonstration of impossibility of conducting coal removal and contemporaneous reclamation in a timely manner due to those conditions. The application shall be filed at the appropriate regional office of the department. Upon a successful demonstration that such conditions exist, the regional administrator may grant a reclamation deferment for a maximum of thirty (30) days, on a form provided by the department. At least seven (7) days prior to the expiration of the deferment, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing any appropriate additional documentation. The regional administrator may renew the original extension once upon such request, such renewal not to exceed thirty (30) days. Any need for additional time must be demonstrated to the Division of Field Services in Frankfort by written request. Such request must initially be submitted to the regional office at least two (2) weeks prior to the expiration of the renewed deferment. Upon recommendation of the regional administrator, the director of the Division of Field Services shall issue his decision on or before expiration of the deferment.

(b) Application for a deferment pursuant to paragraph (b) of subsection (1) for combined surface and underground mining shall be made according to 405 KAR 8:050, Section 7.

(c) Application for a deferment pursuant to paragraph (c) of subsection (1) for coal marketing problems shall be made according to Section 5 of this regulation.

(3) The applicant has the burden of establishing the need for a deferment. The applicant must demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of deferment. The permittee shall continue to comply with the time limits of the coal removal and contemporaneous reclamation requirements until the deferment is issued.

(4) [(3)] Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment. The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except where approved combined mining is being carried out under subsection (1)(b) of this section.

(5) [(4)] The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

Section 5. Additional Requirements for Deferments for Coal Marketing Problems. Upon written application conforming to the requirements of the statutes and regulations, the cabinet may grant a deferment of coal removal and contemporaneous reclamation for a period not to exceed thirty (30) months pursuant to KRS 350.093.

(1) Application requirements.

(a) An applicant for a deferment of coal removal and contemporaneous reclamation shall submit an application on a form specified by the cabinet. An application shall contain at least the following:

1. A demonstration of the need for the deferment, including documentation of the coal marketing problem.

2. A plan consisting of a detailed narrative description of the method by which the applicant shall conform to each of the performance standards specified in subsection (2) of this section (hereinafter "plan").

3. A detailed schedule for implementation of each of the performance standards of subsection (2) of this section (hereinafter "schedule"), which may not extend beyond thirty (30) days from the issuance by the cabinet of a deferment from coal removal and contemporaneous reclamation.

4. An itemized estimate of the total cost of reclamation of the area proposed for deferment. The estimate shall, at a minimum, include calculations and supporting data demonstrating the volume of spoil necessary for backfilling and grading all open pits and highwalls, the cost of backfilling those pits and highwalls, the cost of final grading and revegetation of the entire disturbed area, and the cost of moving necessary reclamation equipment to the job site.

5. Written consent of the surety for the deferment where the permit area or increment is covered by a surety bond.

(b) The applicant shall place an advertisement in the newspaper of largest bona fide circulation in each county in which the permit is located. The advertisement shall be published within ten (10) days after the date the application is submitted to the cabinet and shall contain, at a minimum, the location of the area for which coal removal and contemporaneous reclamation are proposed to be deferred, the reason for which the deferment is sought, and the duration of the requested deferment. The advertisement shall also indicate that the deferment shall not exceed six (6) months initially, but may be renewed for additional six (6) months periods up to a maximum of thirty (30) months. The applicant shall submit proof of the advertisement to the cabinet within fifteen (15) days after application for the deferment. The application shall not be deemed complete until such proof is submitted.

(c) The applicant shall also notify, in writing, the owners of the surface of the permit area and adjacent areas as listed on the permit application. The applicant shall provide proof of such notice to the cabinet. The application shall not be deemed complete until such proof is submitted. Within five (5) days after receipt of a complete application, the cabinet shall notify those other persons, if any, who it determines to have an interest which is or may be adversely affected by the proposed deferment.

(d) Any person with an interest which is or may be adversely affected may file written comments and objections to the application for a deferment within ten (10) days after receipt of the written notice or publication of the newspaper notice, whichever is later.

(e) Upon receipt of the application, the cabinet shall examine the data and calculations submitted pursuant to subsection (1)(a)4 of this section and shall cause an inspection of the area subject to the propoed deferment to be made by an authorized agent of the cabinet. Based upon the data supplied and the inspection, the Division of Permits of the cabinet shall determine whether the existing bond for the entire permit or increment is sufficient for the cabinet to completely reclaim the entire disturbed area of the permit or increment at the expiration of the deferment. If the existing bond is insufficient, then the cabinet shall require, prior to approving the deferment, that the applicant file such additional bond as is determined by the cabinet to be sufficient for the cabinet to completely reclaim the disturbed area.

(f) The cabinet shall consider the application, any other submittals from the applicant and any comments received from the public, and shall render a final decision on the application within thirty (30) days of receipt of the complete application. If the cabinet determines that the applicant has satisfied the requirements for a deferment from coal removal and contemporaneous reclamation contained in KRS 350.093(2) and in this regulation, then the cabinet shall grant a deferment to the applicant for a period not to exceed six (6) months. Upon approval by the cabinet, the plan and schedule proposed by the applicant and any conditions imposed on the approval by the cabinet shall become conditions of the permit.

(2) Performance standards. Each permittee subject to a deferment shall, at a minimum:

(a) Complete final reclamation including backfilling, grading, topsoiling and revegetation on all disturbed areas; provided, however, that those areas of the pit, work area, excess spoil disposal areas, topsoil storage areas, and access road necessary to allow resumption of coal extraction without redisturbance of finally reclaimed areas may be exempted from this requirement for the duration of the deferment. In order to meet this requirement, the permittee may be required to reclaim closer to the pit than the distance limits specified in the contemporaneous reclamation regulation.

(b) Mulch or establish quick growing temporary vegetation, or both, on all areas exempted under paragraph (a) of this subsection (except for haul road surfaces) such as excess spoil disposal areas, work areas, topsoil storage areas, and all other areas which have been cleared of vegetation, to the extent technically practicable to achieve erosion control or stability as determined by the cabinet. The permittee shall maintain the cover on all such areas to minimize erosion throughout the deferment period.

(c) Acid- or toxic-producing spoil shall not be left exposed but shall be covered or treated in accordance with Section 3 of 405 KAR 16:190 and 405 KAR 18:190.

(d) Supplemental sediment control measures such as straw dikes and fabric filter fences may be required by the cabinet on a case-by-case basis to minimize additional contributions of sediment to the stream flow or runoff.

(e) Where accumulation of water in the pit may adversely impact the hydrologic balance, public health and safety or the environment, the cabinet shall require such measures as are necessary to minimize adverse impacts. These may include but are not limited to such measures as:

1. Providing drainage from the pit to prevent breaching of the undisturbed berm.

2. Pumping the water to a treatment facility when accumulation of acid or toxic water in the pit may result in contamination of the ground water.

(3) Deferment implementation.

(a) The permittee shall implement the terms of the approved plan within the time schedule approved by the cabinet and consistent with this regulation.

(b) Except as expressly modified by the approved plan, schedule, and conditions in the deferment approval, the permittee shall comply with all of the requirements of the regulations and the permit conditions which would apply to the operation had the deferment not been granted. These requirements include but are not limited to the following:

1. All discharges of water from the permitted area shall be continually treated to meet the applicable effluent limitations.

2. All water quality monitoring and reporting otherwise required shall continue.

3. All diversion ditches, sedimentation ponds, haul road drainage ditches and culverts, etc., shall be rehabilitated as necessary and continually maintained to comply with the applicable performance standards and with the designs approved in the permit. Sediment shall be removed from the sedimentation ponds when the design sediment storage volume has filled with sediment.

4. Haul road maintenance, such as grading, replacement of durable surface material, and cleaning out of ditches and culverts, shall be continually performed as necessary to comply with the performance standards and the approved permit and to minimize erosion.

(4) Expiration and renewal.

(a) A deferment from coal removal and contemporaneous reclamation shall expire six (6) months after the date of issuance of the deferment by the cabinet. A deferment from coal removal and contemporaneous reclamation may be renewed upon written application for a period of no more than six (6) months upon a showing of need for additional time, and upon a showing that the area subject to deferment is in compliance with the requirements of the regulations, the permit, and the terms of the deferment. The cabinet shall inspect the area subject to deferment prior to approval of any renewal.

(b) Regardless of the reasons for the deferment, no deferments or subsequent renewals shall be granted beyond the maximum aggregate period of thirty (30) months for any permit area, including any deferment periods issued for adverse conditions. At the expiration of the thirty (30) month aggregate period, a permittee shall not be granted any additional deferments or renewals unless the permittee can demonstrate that it has conducted twelve (12) months of continuous active coal removal from the permit area after the expiration of the thirty (30) month aggregate period, it has completed reclamation of all previously deferred areas in the permit area, and it otherwise meets all requirements for a deferment. For the purpose of this paragraph, "completed reclamation" means completion of reclamation phase I as defined by 405 KAR 10:040, Section 2(4)(a).

(c) The deferment shall terminate upon resumption of coal extraction activities on the permit area subject to deferment.

(5) Enforcement and revocation.

(a) The cabinet shall inspect the area subject to deferment at least once each month on the average, during the routine partial and complete inspections made of the permit area. Upon each inspection, the inspector shall note under the "comments" section of the Mine Inspection Report form whether the area subject to deferment meets the conditions of the deferment approval, including the plan and schedule.

(b) In the event that the inspection shows that a violation of the conditions of the deferment or of the regulations or of the conditions of the permit is occurring on the area subject to deferment, or is casually related to the area subject to deferment, then the cabinet shall issue a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance. If the permittee fails to abate the violation within the time for abatement, or any extension thereof, established by the cabinet, then the cabinet shall revoke the deferment in addition to other enforcement actions required by Title 405, Chapters 7 through 24.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 28, 1984 at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk
(1) Type and number of entities affected: The two types of entities affected by these amendments are surface coal mines and the general public in the coal fields that could be adversely affected by surface coal mining operations. More specifically, these amendments impact those mining operations that seek deferments from contemporaneous reclamation requirements, the number of which will fluctuate from month to month.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be some additional costs to operations seeking deferments for coal marketing problems. There will be some costs to develop an interim reclamation plan and submit it in an application to the department. There will also be additional reclamation costs incurred to insure that disturbed areas left unreclaimed during the deferment period are stabilized with temporary vegetation or other measures. However, most of the reclamation requirements emphasized in this regulation are also required by other existing regulations. There will be some savings to the general public due to the decreased adverse environmental impacts that will occur from unreclaimed areas during the period of deferment.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): These amendments require that operations be reclaimed to at least the distance limits of the contemporaneous reclamation regulation before a deferment can be issued. This will eliminate unfair competition since operations will no longer be able to get deferments for large areas left unreclaimed in violation of the reclamation distance limits.
(b) Reporting and paperwork requirements: There will be an expanded application form and a new public notice and comment period for deferments for coal marketing problems. The application procedure for other types of deferments are the same as have been followed previously, although the procedures were not in the regulations.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be some additional costs to the cabinet due to the increased technical review that must occur for applications for coal marketing deferments.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There will be additional paperwork involved due to the public notice and comment period and bond re-evaluation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments are the result of a settlement of a law suit. Although the parties to the litigation considered various alternatives in the negotiation process, now that the settlement has been executed, no other alternatives can be considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering is not applicable to this regulation.

Fiscal note is not required for this regulation because it will have no impact on local government.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Proposed Amendment)

601 KAR 9:013. National Guard license plates.

RELATES TO: KRS 186.173
PURSUANT TO: KRS 186.173
NECESSITY AND FUNCTION: KRS 186.173 as enacted by the 1976 General Assembly and amended by the 1984 General Assembly, empowers the [Department of] Transportation *Cabinet* to adopt rules and regulations to implement the provisions as set forth therein for the issuance of a National Guard license plate. This regulation is intended to implement the provisions of KRS 186.173.

Section 1. A license plate issued under the provisions of KRS 186.173 may be validated for future years registration by the placing of a decal thereon.

Section 2. Before a vehicle bearing a National Guard plate may be sold or transferred, the member of the National Guard owning such a vehicle shall apply to the county clerk and for a clerk's fee of one (1) dollar be issued a regular registration plate and certificate of registration. Such sale or transfer shall occur simultaneously with such registration.

Section 3. A member of the National Guard may have the special plate transferred from one (1) vehicle to another, if both vehicles are owned by him. To accomplish

this transfer, he must purchase a regular registration plate for the vehicle from which the National Guard plate is removed and pay the appropriate fees for having the National Guard plate changed from one (1) vehicle to another.

Section 4. The only vehicle which may bear and use a National Guard plate, under the provisions of KRS 186.173, is a vehicle of a kind required to be licensed under the provisions of KRS 186.050(1) excluding taxicabs, airport limousines and U-Drive-Its.

Section 5. When a person, under the provisions of KRS 186.173, takes the National Guard license plate to the county clerk for reissuance or cancellation, such plate shall be accompanied by the registration receipt and any and all other required documents.

Section 6. In the event a National Guard license plate is lost or stolen, the owner thereof may secure another National Guard license plate by the making of an affidavit and the payment of the fees as set forth in KRS 186.180.

Section 7. No National Guard license plate shall be used on a motor vehicle other than the one for which it was issued.

Section 8. If the applicant for a National Guard license plate is a National Guard retiree, such application must be signed by the custodian of military records, Department of Military Affairs. The custodian's signature shall certify that the applicant is a retiree of the Kentucky National Guard with twenty-five (25) years of service.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 23, 1984, at 9 a.m. in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing must notify in writing no later than August 18, 1984: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Trager
(1) Type and number of entities affected:120 County Clerks; Department of Miltary Affairs; Applicant
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Additional signature required on application
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Enlarged form TC 96-216
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

84 BR No. 1699 (House Bill 565)
Subject/Title: National Guard license plates
Local Government Mandate: No
Preparer: John Trager

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 9:074. Kentucky highway use license, records and taxes.

RELATES TO: KRS [Chapter] 138.*655 to 138.725*
PURSUANT TO: KRS [13.082,] 138.725
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a license number to each motor carrier, and the carrier shall cause said license number to be displayed on a motor vehicle identification card issued it by the department. The card shall be carried in each vehicle operated by the carrier at all times.

Section 2. Bonds-Cash Deposit. *(1)* Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 and 138.670 shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. The bond will be conditioned as required in KRS 138.670, and the department shall administer the bond as provided in KRS 138.670.

(2) In addition to the bond imposed in subsection (1) of this section, every business engaged in mining, processing, transporting or selling coal in excess of the established weight laws pursuant to a cooperative agreement with the Transportation Cabinet, or a certified transportation plan or subject to the ton tax provided by law shall file with the cabinet upon request a corporate bond, cash bond, or security approved by the cabinet. The minimum amount of the bond shall be $5,000 and the maximum amount shall be one (1) year's liability for the taxes imposed. The bond shall be in such form and amount as the cabinet shall prescribe and the cabinet shall administer the bond as provided in KRS 138.670.

Section 3. Registration for *Highway Use* [Weight Distance] Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of a tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax is due under KRS 138.660 or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky. A motor carrier identification card shall be issued which contains the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this subsection.

(c) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.665.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification card is issued or the duly assumed business name of the licensee, as it appears on the license. All licensees are required to use the name utilitized in the application for the license in all documents relating to their operations and in all correspondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, *Division of Motor Carriers* [Fuel and Roadway Taxation Branch], Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 6. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate rules and regulations. The licensee shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required cab card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A motor vehicle which is leased to a certificated carrier will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 7. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in Kentucky and the Kentucky motor fuel tax has been paid. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) The valid receipt is one (1) which:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the state of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of units; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

(3) [(2)] Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove on-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

(b) Credit for fuel purchase receipts other than the taxable units shall not be allowed.

(4) [(3)] In instances where fuel is purchased by trip leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

Section 8. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, or these regulations, its Kentucky Highway Use Tax License may be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 9. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all cab cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a cab card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

Section 10. Coal Shippers License and Tax Status Changes of All Motor Carriers. (1) All persons liable or responsible for payment of ton tax or payments due to cooperative agreements and transporting coal over the state maintained highways system by motor vehicles exceeding the gross weights or gross axle weights prescribed by the Secretary of Transportation pursuant to KRS 189.222 shall obtain an approved tax reporting license from the Department of Vehicle Regulation. Prior to the issuance of the tax reporting license, the licensee must obtain a certified transportation plan from the Department of Vehicle Regulation in accordance with 601 KAR 35:020. The Department shall assign each taxpayer a license number.

(2) Licensees referenced in subsection (1) of this section that have an approved cooperative agreement shall pay their tax in accordance with the terms of the cooperative agreement.

(3) Licensees referenced in subsection (1) of this section that do not have a cooperative agreement shall report and pay their coal ton tax as follows:

(a) The coal ton tax shall be reported on the requisite forms as prescribed in the manual published by the Transportation Cabinet titled, "Forms Applicable to Coal Transportation," adopted July 13, 1984, a copy of which is on file with the Legislative Research Commission.

(b) The coal ton tax shall be reported and paid monthly.

(c) The coal ton tax returns are due within twenty (20) days following the close of each monthly period.

(4) The exempt and/or non-exempt status of each vehicle in regard to Kentucky motor fuel surtax or weight distance tax may be changed only once during each quarter, (January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 31). A tax liability shall not change because of a status change, until the first day of the next succeeding quarter after the status is changed. The change from non-exempt status to exempt status requires that an application be filed with the Transportation Cabinet.

Section *11.* [10.] Tax Liability and Protest Procedures. (1) The licensee will be mailed a tax statement, found as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 138.110 in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the department's legal section for collection.

Section *12.* [11.] Penalties. In addition to any other penalties which may be imposed under KRS 138.990 and any other applicable laws, the licensee shall be subject to the civil penalties provided for in KRS 138.775.

Section *13.* [12.] Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the state of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section *14.* [13.] Records Disposition. The department will retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license will be retained two (2) years after cancellation.

Section *15.* [14.] Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are

being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest.

Section *16.* [15.] Licensee taxpayers, for purposes of ease in tax reporting compliance, and department administration and audit convenience, may, upon written request to the department and receipt of written permission from the department, report miles operated upon Kentucky highways on the basis of the current Household Goods Bureau mileage guide, and supplements thereto, in lieu of reporting on the basis of actual miles operated, provided, however, that such mileages are reported in respect to movements between the points and over the routes actually operated, and provided that such mileages would not result in a consistent understatement of actual miles operated on Kentucky highways.

Section 17. Maintenance of Records. (1) Licensees reporting and paying taxes under the cooperative agreement, certified transportation plan, or ton tax provision shall keep and maintain records of all coal shipments over the state maintained public highways.

(2) Each licensee shall also maintain weight tickets, bona fide third party documents or other documents to accurately verify tonnage that will reflect the true tonnage transported over said highways and the distance that such tonnage was transported over such highway.

(3) The weight ticket or third party document shall include but not be limited to the following:

(a) Name and identification number of the mine owner, severer, processor, broker or shipper.

(b) Name and KYU number of person transporting coal.

(c) Transporter's assigned unit vehicle number.

(d) Points of origin and destination.

(4) All records shall be maintained for five (5) years for audit and tax purposes.

(5) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

FLOYD G. POOLE, Secretary

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 22, 1984 at 2 p.m. in the first floor auditorium of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing must notify in writing no later than August 17, 1984: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore

(1) Type and number of entities affected: Approximately 2,000 estimated coal truckers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Amended recording requirements

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None, changes mandated by statute.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Not applicable.

LOCAL MANDATE IMPACT STATEMENT

House Bill 25

SUBJECT/TITLE: Kentucky Highway Use License, Records and Taxes

SPONSOR: Division of Motor Carriers, Department of Vehicle Regulation

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE:

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY: Fiscal Estimtes: N/A

MEASURE'S PURPOSE: Amend existing highway use tax recording and payment requirements to provide for exemptions from certain highway use taxes; and to provide for the recording of payment of tonnage taxes and contract payments all as authorized and required by House Bill 25.

PROVISION/MECHANICS: Provide for licensing and tax reporting requirements incorporating those tax exemptions and tax and contract payments established by House Bill 25.

FISCAL EXPLANATION: N/A

PREPARER:

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 15:010. Airport development loans.

RELATES TO: KRS 183.200 to 183.213

PURSUANT TO: KRS [13.082, 183.024,] 183.213

NECESSITY AND FUNCTION: KRS 183.213 provides that the department shall promulgate regulations governing airport loans made under KRS 183.200 to 183.213 and this regulation is promulgated *to set forth specifications regarding applications for such loans* [in compliance with said statute.]

Section 1. Definition. "Airport development loan" means a loan authorized by KRS 183.200 to 183.213 and regulations promulgated thereunder.

Section 2. An airport board that seeks an airport development loan shall file an original and two (2) copies

of an application with the *Transportation Cabinet, Executive Director, Office of Aeronautics, State Office Building* [Director, Division of Mass Transportation], Frankfort, Kentucky 40622.

Section 3. Content of Application. The following information and exhibits shall be included in the application:

(1) Name and address of the airport board.

(2) The amount of airport development loan requested from the *cabinet* [department].

(3) The description of the proposed airport project by attaching an exhibit showing an engineer's plat of the site boundaries with the planned location or improvement of airstrips, facilities, servicing utilities, access roads and total acreage indicated thereon.

(4) An exhibit showing the ownership and encumbrances on the land described in subsection (3) of this section.

(5) An exhibit stating the itemized detail*ed* cost or estimated cost of the land and all proposed improvements, the engineering and legal expenses, and any other expenses necessary to *determine* [the determination of] the cost of the airport project.

(6) An exhibit that states the method and amount of financing for the proposed project including federal, state and local participants with the percentage of the total project cost contributed by each. This exhibit shall show evidence of the availability of funds from each source; the proposed terms of an airport development loan and schedule of repayment; the percentage of the total project cost to be covered by an airport development loan; and evidence that funds are not available in the amount necessary to establish the project without an airport development loan.

(7) An exhibit with documentation of the financial standing of the airport board in the form of a current financial statement containing a full disclosure of all assets, liabilities, and income.

(8) A statement *as to* when the proceeds of the loan will be needed and a proposed schedule for site acquisition or development.

(9) An exhibit containing letter(s) from the appointing authority or authorities attesting that said authority or authorities accept full responsibility for repayment of the loan principal, interest, and any late payment penalties in the event of default on the loan by the airport board.

Section 4. The *annual* rate of interest to be charged *throughout the life of* [on] an airport development loan shall be equal to the [current applicable] tax interest rate *established pursuant to KRS 131.183 for the quarter commencing January 1 of the current year in which the loan is approved* less three (3) full percentage points. [The current applicable tax interest rate shall be the interest rate determined in KRS 131.183, and reported on November 15 of any year by the Commissioner, Department of Revenue, Commonwealth of Kentucky, to become effective on January 1 of the immediately succeeding year.]

Section 5. Determination Standards. Standards for determining the soundness and feasibility of projects shall be as follows:

(1) Whether funds for the project can be obtained from federal, local or other sources, or

(2) Whether the proceeds for the loan are to be expended for initial construction of an airport facility or the improvement of the safety or adequacy of an existing airport facility, or

(3) Whether the airport development project will generate adequate revenue to repay the loan, or

(4) Whether the airport master plan demonstrates that such facilities are needed to enable the airport to give better service to the aircraft operators anticipated to use the airport facility.

Section 6. Terms of Loan. The airport development loan agreement entered into between the airport board and the *cabinet* [department] shall have the following terms in addition to those stated in KRS 183.210:

(1) That the principal amount loaned shall be repaid to the *cabinet* [department] in annual installments plus accrued interest or as otherwise provided in the agreement.

(2) That the first installment payment shall be due within one (1) year after the proceeds of the loan are paid to the airport board.

(3) That the airport board may repay any or all of the unpaid balance without penalty provided that the interest shall be computed to the date said advance repayment is made.

(4) That all payments on principal and interest shall be made to the Office of *Aeronautics* [the Director, Division of Mass Transportation], or as otherwise provided in the agreement.

(5) That the loan shall be used by the airport board for the purpose stated in the application and for no other purpose.

(6) That for value received and for the purpose of affording credit to the airport board, the appointing authority or authorities jointly and severally absolutely and unconditionally guarantee the payment at maturity of all obligations under the loan agreement.

(7) The agreement may contain any other terms agreed upon by the airport board and the *cabinet* [department].

ROBERT COX, Executive Director
FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 23, 1984 at 1:30 p.m. in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing must notify in writing no later than August 18, 1984: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore

(1) Type and number of entities affected: 69 Kentucky airport boards

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Change name of agency executing loans.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Change

name of agency executing loans.

(3) Assessment of anticipated effect on state and local revenues: None

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

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The application process should be the same for all airport boards.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Airport Development Loans
SPONSOR: Transportation Cabinet
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE: To change the name of the agency executing the loans.
PROVISION/MECHANICS: N/A
FISCAL EXPLANATION: N/A
PREPARER: Larry E. Moore

TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)

603 KAR 4:035. Advertising devices; placement along limited access *highways* [roadways] of four (4) or more lanes.

RELATES TO: KRS 177.830 to 177.890
PURSUANT TO: KRS [13.082,] 177.860, 177.865
NECESSITY AND FUNCTION: KRS 177.860 *and 177.865 require* [authorized] the Commissioner of Highways to prescribe by regulations reasonable standards for the placement of advertising devices *within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public* [along specified roadways]. This regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related *goods and* services are available.

Section 1. Definitions. The following terms when used in the regulation shall have the following meaning:

(1) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD," "LODGING," or "CAMPING," or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the brand name or trademark of qualified motorist services available [on the crossroad] near the interchange.

(3) "Business location" means a place of business where more than one (1) motorist service is available.

(4) "Logo" means a distinctive symbol or sign used by a motorist service business as a means of identification of its products or business.

(5) "Single exit interchange" means a grade separated crossing of roadways having one (1) mainline off-ramp to provide access to the crossroad.

(6) "Double exit interchange" means a grade separated crossing of roadways having two (2) mainline off-ramps to provide access to the crossroad.

(7) "Intersection" means a junction of two (2) roads at the same grade level.

(8) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(9) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.

(10) "Secondary or incidental motorist service" means one (1) or more motorist services available at a business location which are subordinate to the primary motorist service.

Section 2. General Provisions. The Commissioner, Department of Highways, shall authorize the placement of specific motorist service information panels with business signs within the right-of-way of limited access highways of four (4) or more travel lanes in conformance with the Federal Highway Administration's (FHWA's) adopted standards as contained in *Federal Highway Program Manual* (FHPM) 6-8-3-8. The Department of Highways shall control the erection and maintenance of said panels and signs in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the following criteria:

(1) A specific information panel bearing separately attached business signs shall be erected between the previous interchange and 800 feet in advance of the exit direction sign at the interchange where motorist services are available. Spacing between each specific information panel shall also be a minimum of 800 feet and shall not conflict or interfere with other highway guide signs.

(2) Business signs separately attached on a specific information panel shall show the logo, name, brand, and/or trademark of motorist services conveniently accessible from the interchange. All business signs shall be furnished to the Department of Highways by the business at no cost to the Department and shall be manufactured to the standard specifications of the Department. *An exception to this subsection, Section 2(17) and Section 3(8) is any business sign which must be replaced as a result of the change in regulations and policy to allow six (6) instead of four (4) business signs on "FOOD," "LODGING," and "CAMPING" panels shall be provided by the Department of Highways at no cost to the business.*

(3) No specific information panels may be erected at an interchange or intersection which intersects another limited access facility nor at any interchange or intersection which does not have a convenient re-entry in the desired direction of travel. No more than one (1) specific information panel for "GAS," "FOOD," "LODGING," or "CAMPING" shall be erected in each direction for an interchange or intersection. In the direction of travel, the successive panels shall be for "CAMPING," "LODGING," "FOOD," and "GAS," in that order.

(4) Specific information panels may be permitted inside urban areas where interchange spacing is a minimum of two (2) miles and where the roadside development or terrain is such that motorist services are not readily iden-

tifiable from the traveled way for a reasonable distance in advance of an exit.

(5) For single exit interchanges, a standard full-size panel shall accommodate a maximum of six (6) business signs for "GAS," [and four (4) business signs for] "FOOD," "LODGING," and "CAMPING." In instances when the number of businesses does not warrant a full-size panel, a half-size panel may be used. Where service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," or "CAMPING" logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage to the service.

(6) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base. The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit. This panel shall accommodate a maximum of three (3) business signs for "GAS," [and two (2) business signs for] "FOOD," "LODGING," and "CAMPING" per exit. Where a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information sign may be omitted or a single exit interchange sign may be used.

(7) Criteria for installation of specific information panels with intersections at grade is significantly different. Provisions of distance from the crossroad, size of information panels and business signs, number of business signs per panel, distance between panels, and selection of businesses for qualification for business signs shall conform to standards and specifications as described in FHPM 6-8-3-8 and the state MUTCD.

(8) If a business ceases to exist or is not in operation for any reason, in accordance with the standards under which a business sign was placed on a specific information panel, the business sign shall be covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. Businesses of this type shall notify the Department of Highways in writing thirty (30) days before such opening and closing occurs.

(10) Only one (1) business sign pertaining to a business location shall be permitted in each direction of travel in advance of an interchange or intersection; except that in the absence of adequate motorist service business signs to fill a specific information panel with primary service signs, secondary or incidental motorist service business signs may be allowed on those unfilled panels.

(11) At a business location where more than one (1) motorist service is available, only the primary motorist service shall be considered for the purpose of permitting business signs on a specific information panel; except that if a space is not available for the primary motorist service, a secondary or incidental motorist service may be considered if space is available on a specific information panel for that type service sign.

(12) Secondary or incidental motorist services shall not be considered until all businesses with a primary motorist service have been allowed an opportunity to have their business signs placed on the specific information panel pertaining to that type motorist service.

(13) In selecting secondary or incidental services, the same criteria as required for primary motorist services shall be used to determine their qualification for a business sign.

(14) Only those businesses within a three (3) mile limit in any direction from a four (4) lane limited access road shall be eligible to place signs on information panels except that, if within that three (3) mile limit services of the type being considered are not available, the Commissioner of Highways may extend the limit in three (3) mile increments until services of the type being considered, or fifteen (15) miles are reached.

(15) In the absence of exit number guide signs, the words "Next Right/Left" shall be used.

(16) A business with one (1) or more signs in violation of KRS 177.830 thru 177.890 on any route controlled by this statute and regulations pertaining thereto, shall not be eligible to qualify for a business sign until all violations have been removed.

(17) *In the absence of an official trademark or logo, a name may be substituted.* Descriptive advertising *words,* phrases or slogans shall not be allowed on a business sign; i.e., *"Open 24 Hours," "Joe's 24-Hour Market," (only the name Joe's shall be displayed), "Free Coffee," "Credit Cards Accepted," etc. The only exception to this provision is the word "Diesel" on a "GAS" business sign.* ["Biggest Little," "We're No. 1," "Trying Harder," etc.]

(18) Directional business signs may be erected on crossroads if the motorist service is at a distance or in a location which requires extended direction.

Section 3. Requirements for Obtaining Business Signs. A motorist service business located at, or conveniently accessible from, an interchange or intersection shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(1) Each business shall offer written assurance that it conforms with all applicable laws concerning the provision of public accommodations with regard to race, religion, color, sex, age, handicap, or national origin.

(2) To qualify for a "GAS" business sign, a business must be in operation seven (7) days a week, sixteen (16) hours a day, and, as a minimum, have fuel, oil, *water, drinking water,* restroom facilities, and telephone available.

(3) To qualify for a "FOOD" business sign, a business must be licensed or approved by the appropriate state and/or local regulatory agency, and, as a minimum, be in operation seven (7) days a week, sixteen (16) hours a day to serve three (3) meals a day beginning no later than 7:00 a.m., and have a reasonable seating capacity for sit-down, eat-in service.

(4) To qualify for a "LODGING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate sleeping accommodations, and have a public telephone.

(5) To qualify for a "CAMPING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate parking accommodations, modern sanitary facilities, and drinking water.

(6) Qualifying businesses nearest to the interchange or intersection shall receive preference in the selection process. If a new qualifying business comes into existence nearer the interchange or intersection than one which already has a business sign displayed on a fully utilized panel, the new business may have its business sign displayed and the business farthest from the interchange will have its business sign removed at the end of the contract year.

(7) The qualifying business shall pay to the Department an annual fee of $600, in advance, for each mainline

business sign for gas, food, and lodging and $300 for camping. The annual fee for the first year must accompany the initial application. The yearly renewal fee shall be due thirty (30) days prior to the annual renewal date. The payment of this fee guarantees that the business sign will be displayed for one (1) contract year as long as the business violates no part of their agreement with the Department of Highways.

(8) If a business sign must be removed for any reason, a fee of $100 shall be charged for the reinstallation of a sign for the same business.

(9) Business sign logos shall be delivered to the appropriate Highway *District* [General Manager] within sixty (60) days of notification of approval by the *Department of Highways* [Division of Roadside Regulation Director]. Failure to deliver the business sign within this specified time period may result in the forfeiture of the fee, and another business or businesses may be given the opportunity to qualify for the vacated space.

(10) The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. No business sign shall be displayed which will misinform the traveling public or which is unsightly, badly faded, or in a state of delapidation. In such instances the business shall provide a new or renovated business sign.

Section 4. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of a four (4) lane limited access road and the center line of a non-limited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad *or public thoroughfare* to the particular motorist service.

Section 5. Application forms, criteria for selection of businesses with motorist services, standards of quality of business logos and any other information relative to the activities and functions necessary and authorized by KRS 177.860, 177.865 and this regulation, to implement and administer such law and regulations may be obtained by writing the *Transportation Cabinet* [Division of Roadside Regulation, Room 224, State Office Building Annex,] Frankfort, Kentucky 40622.

Section 6. Revocation of Business Sign Contract. Failure to comply with any of the regulations set forth herein shall be cause for the revocation of a business sign contract. In such instances the Department of Highways shall notify the business in writing of the violation(s). If the business fails to comply within fifteen (15) days after receiving such notification, the Department of Highways shall take immediate action to remove, replace, or cover any such business signs.

Section 7. Appeal to the Commissioner of Highways for Exemption. The Commissioner of Highways may grant an exemption to a business from the necessity of complying with any of the requirements set forth in this regulation provided it is determined by the commissioner that such exemption is in the public interest and also provided the business conforms to the Federal Highway Administration standards for specific information signs and provided further that a business which conforms to all the requirements set forth in this section shall be given a preference over a business not conforming to all of said requirements in qualifying for placement of a business sign on a specific information panel. Any request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 8 of this regulation.

Section 8. [7.] Appeal of *Department of Highways* [Revocation] Action. Any business or person aggrieved by the action taken by the Department of Highways in administering these rules and regulations may request a formal hearing before the Commissioner of the Department of Highways. The request for the formal hearing shall be filed in writing and shall set forth the nature of the complaint and the grounds for the appeal.

STEPHEN REEDER, Commissioner

APPROVED BY AGENCY: July 12, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 21, 1984 at 1:30 p.m. in the 4th floor hearing room of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing must notify in writing no later than August 16, 1984: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Stephen Reeder

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: $600 fee plus cost of logo for gas, food, lodging. $300 fee plus cost of logo for camping.

2. Continuing costs or savings: Annual fee plus $100 for replacement of logo if necessary and cost of replacement logo.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Direct benefits due to additional traffic to the business. Direct benefits to the same type motorist service due to additional traffic.

(b) Reporting and paperwork requirements: Written documentation of proof of compliance with all laws or ordinances relating to the type business. Filing of application for logo. Negotiating of contract for logo.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: FHWA participation in cost of erecting motorist information panels on a 90/10 basis on interstate routes—75/25 basis on four lane federal-aid primary routes which are not toll roads.

2. Continuing costs or savings: Maintenance and replacement if necessary of motorist information panels and administrative costs.

3. Additional factors increasing or decreasing costs: The fee system listed above is expected to offset maintenance and replacement of panels and administrative costs.

(b) Reporting and paperwork requirements: Forms, applications, contracts, correspondence, records, documents of compliance by business, and reports as necessary.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative—Repeal of the Federal Highway Beautification Act and the Kentucky Billboard Law. The alternative is unlikely and undesirable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 3:100. Data form, professional staff.

RELATES TO: KRS 157.390, 157.420[(1)]
PURSUANT TO: KRS [13.082,] 156.070, *157.390* [156.160]
NECESSITY AND FUNCTION: *KRS 157.390 through 157.420 sets forth how Foundation Program allotments are determined. This regulation allows the Department of Education to collect* [To provide] assignment and salary data on teachers employed by the school district and included in the [minimum] Foundation Program calculation as classroom units.

Section 1. *The* Department of Education professional staff data form shall be completed during the week of September 15 for any teacher paid by and/or under the supervision of the district board of education. *The completed forms shall be forwarded to the Division of School Management and Audit not later than October 1 of each school year.*

Section 2. Rank and experience of the teacher on September 15 shall determine the rank of the Foundation Program teacher for the school year.

Section 3. A vacancy or new position staffed between September 15 *and* [through] January 31 shall be assigned a fraction of a classroom unit. Changes of personnel, vacancy, new position staffed, or position abolished shall be reported on the February amendment to the professional staff data form. This amendment shall be completed February 1 and is due in the Division of *School Management and Audit* [Finance] on or before February 5. No part of a unit shall be granted for positions staffed after January 31.

ALICE McDONALD
Superintendent of Public Instruction
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984 at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray
(1) Type and number of entities affected: 180 school districts
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Will reduce the amount of time departmental field staff would be required in local districts on collection of P.S.D.'s
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: Same
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 4:030. Local board's contract with architect, engineer.

RELATES TO: KRS 156.160[(11)], 322.360
PURSUANT TO: KRS [13.082,] 156.070, [156.130,] 156.160
NECESSITY AND FUNCTION: *KRS 156.160 requires the State Board of Education to prescribe forms, including contract forms, for use in local districts; and KRS 322.360 requires the use of a licensed architect or engineer on public works costing more than $2,000. This regulation provides* [To provide] a legal document of agreement concerning work to be done and the amount of pay to be received.

Section 1. A local board of education and an architect or engineer currently registered in Kentucky shall negotiate and enter into a contract for services needed, *pursuant to KRS 322.360,* on forms provided by the State Board *of* [for Elementary and Secondary] Education prior to preparation of plans for remodeling, alterations, or construction of school buildings and facilities. *Within fifteen (15) days after the execution by the parties thereto,* this contract between the local board of education and the architect or engineer shall be submitted to the Superintendent of Public Instruction for *review and* approval. The local district shall

be notified of the approval or disapproval of the contract within thirty (30) days.

Section 2. The architect or engineer shall be responsible to the owner to provide supervision of the construction of the project to the extent that the architect or engineer shall certify that all phases of the project have been completed in conformance with the sealed (Kentucky registration stamp affixed to plan sheets) plans and specifications approved by the Superintendent of Public Instruction and other agencies having jurisdiction.

Section 3. The local board of education shall not disburse the final twenty (20) percent of the architectural or engineering fee until the certification statement of completion of the project, as required by Section 2 of this regulation, and accompanied by as-built drawings, is filed with and receipt acknowledged by the Superintendent of Public Instruction in accord with architect/engineer contract.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert E. Spillman
(1) Type and number of entities affected: 180 school districts
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Becomes a part of regular project administration.
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: Increasing responsibility of design professionals
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None to our knowledge
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Pupil Personnel Services
(Proposed Amendment)

703 KAR 2:010. Terms and months.

RELATES TO: KRS 158.060, 158.070
PURSUANT TO: KRS *156.031* [13.082], 156.070, 158.070
NECESSITY AND FUNCTION: KRS 158.060 and 158.070 define and establish the school day, school month, and school term, and direct the State Board of Education to adopt regulations governing the use of school days. This regulation is necessary for efficient management, control and operation of schools and to insure uniformity in the school term, month and day in all approved schools of the state.

Section 1. The minimum school term of 185 days with a minimum six (6) actual instructional hour day shall consist of nine (9) twenty (20) day school months and one (1) partial school month of five (5) days. Schools shall be in session a minimum of six (6) actual instructional hours on each of these days except as otherwise provided by KRS 158.060, 158.070 and regulations of the State Board of Education.

Section 2. *(1) If a school district, during any school year, misses a total of five (5) hours or less on all school days shortened due to an emergency, this time will not have to be made up and no shortened school day report will be submitted to the Department of Education for those hours. Any time missed on shortened school days over the five (5) hours will have to be made up and these hours beyond the five (5) will be reported to the Department of Education on a shortened school day report. Partial days missed over the five (5) hours can be made up by extending the regular school day upon approval of the Department of Education. Those school districts already going longer than the six (6) hour minimum instructional day will be allowed to count that extra time toward making up partial days missed over the five (5) hours forgiven but only upon approval of the Department of Education. The extended school day to make up hours missed beyond the five (5) hours will start upon notification to the Department of Education, pending approval. Extending the school day or counting time beyond the six (6) hour minimum instructional day to make up time missed on shortened school days due to emergency will be allowed only after the time is missed. "Snow banking" time is not permissible.*

(2) All full school days missed will be made up by putting these full days back in the school calendar. All school districts shall have a minimum of 175 instructional days each school year. The only exception would be in extreme situations as explained in KRS 158.070(3)(a) and (3)(b). Disaster days as outlined in KRS 158.070(3)(b) will be recommended by the Superintendent of Public Instruction and approved by the State Board of Education only in catastrophic situations. Only under dire circumstances will any school district be excused from the required 175 day instructional year. [If a school district has adopted an extended school day before emergency, the time in excess of

the minimum school day may, with the approval of the State Board of Education, be used to make up days missed as a result of emergency. If the school day is extended after the emergency occurs, the words "make-up" shall be written in the attendance records as the days are accumulated. "Make-up" days shall be used for the purpose of meeting requirements for a minimum school term as required by KRS 158.070 and no attendance shall be recorded for these days.]

Section 3. Each day on which school is not in session for any reason other than those specified by State Board of Education regulations or in excess of the limitations therein provided, shall not be counted in the minimum school term.

Section 4. No report shall be made until the completion of a twenty (20) day school month except that a report for the tenth school month shall be made at the conclusion of the school term.

Section 5. *(1)* Each school day shall consist of at least six (6) hours of actual organized and supervised instruction, exclusive of lunch periods and recesses, except that kindergarten, readiness classes, first grade classes, and classes for the handicapped may be a program of less than six (6) hours per day under policies adopted by the local school board and approved by the State Board of Education. Lack of compliance with minimum school day requirements shall, pursuant to KRS 157.350, result in appropriate proportional reductions in Foundation Program allotments.

(2) The following are the only approvable activities that may be conducted during the six (6) hour school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades K-12";

(b) Enrichment courses approved by the State Board of Education;

(c) Experimental courses or programs approved by the State Board of Education;

(d) Co-curricular activities, such as club meetings and assemblies, as long as such are related directly to the instructional program and are scheduled so as to minimize absences from classroom instruction; and

(e) Homeroom in the morning and afternoon for checking attendance. These periods shall not exceed ten (10) minutes per homeroom or twenty (20) minutes daily.

Section 6. [Schools shall not be closed or] The *school* day *shall not be* shortened on regularly scheduled school days except in cases of emergency declared by the local superintendent in accordance with policies of the local board of education, *and partial days missed shall be made up in accordance with applicable law and State Board of Education regulations. Whole school days may be rescheduled when the need arises by following the procdure in 703 KAR 2:020, Section 3.*

ALICE McDONALD
Superintendent of Public Instruction

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 11:50 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984 at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Calloway

(1) Type and number of entities affected: 180 school districts

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Clarification of existing regulation. The proposed change in Section 2 reflects recent changes in the statutes. The proposed revision in Section 5 is needed to clarify the point that all extracurricular activities shall be held outside of the six (6) hour instructional day. The proposed amendment in Section 6 will clear up any possible conflict between this regulation and 703 KAR 2:020, Section 3.

Tiering:
Was tiering applied? No. Not applicable.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:035. Annual in-service [education] plan.

RELATES TO: KRS *156.095, 157.390,* 158.070

PURSUANT TO: KRS [13.082,] 156.095, *157.390* [156.160], 158.070

NECESSITY AND FUNCTION: *KRS 156.095 athorizes the Department of Education to establish, direct, and maintain a state-wide program of in-service teacher training, with relevant purposes of such a program being the improvement of the leadership qualities and professional competence of principals and supervisors and for such other services designated by the State Board of Education for the improvement of instruction. KRS 157.390(2)(a) allows the state board to approve the use of extended employment days; and* KRS 158.070 requires the state board [of Education] to adopt regulations setting forth guidelines and procedures to be followed for the ap-

proval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for in-service[, professional development and planning] activities for the professional staff. This regulation implements *these duties and powers* [this duty] by interpreting what in-service education consists of and by requiring each local district to have approved annually a master in-service education plan by which it is to be guided in providing suitable in-service training programs *and in requiring all instructional leaders to participate in the state-wide training program implemented under KRS 156.101.*

Section 1. In-service education shall mean any training of school personnel to prepare them to satisfy a need of the school system. The data, skills, and concepts comprising the substance of the training programs are determined by deficiences in the instructional, administrative and other certified personnel of the school system.

Section 2. Each local district board of education shall *annually* by May 1, [beginning in 1981 and annually thereafter,] submit to the State Department of Education for approval a master in-service education plan. The plan shall include the following components:

(1) Name of local school district;

(2) Name of in-service education coordinator;

(3) Names of local school district's in-service education committee, which shall be a representative body of all areas or levels of educational personnel within the local school district;

(4) Description of needs assessment, including a brief description of procedures implemented to determine how the district's in-service education needs were assessed;

(5) Statement of district's instructional improvement goal(s), which shall be based on identified needs *and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of such instructional leaders. Such training hours for instructional leaders may be completed as a part of the state-wide program for such, either during the regular school term or as an approved use of extended employment;*

(6) Statement of district's in-service education objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goal(s) *and shall include but shall not be limited to the completion of the above-defined requisite training hours for all instructional leaders;*

(7) Description of recordkeeping system and procedures, including an indication of the participation of educational personnel in in-service education activities; and

(8) Description of evaluation, including:

(a) A summary of how [implemented] in-service education programs *implemented and operated by individual local school districts* will be evaluated; and

(b) A summary of how the implementation of the master in-service education plan will be evaluated.

Section 3. When implementing in-service education programs under KRS 158.070, each local school district shall adhere to its approved master in-service education plan as developed with technical assistance provided from the Department of Education.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 11:50 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. James Fouche

(1) Type and number of entities affected: All 181 school districts and approximately 300 instructional leaders.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs will be determined by providers and whether the districts will assume cost of participants.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Master in-service plans, verification of participation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Biennial needs assessment: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Verification of participation, reporting back to districts approval/disapproval of master inservice plan.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposal is the most desirable alternative to the status quo.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No, There is a need for uniformity throughout the state for training of instructional leaders.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:304. Required program of studies.

RELATES TO: KRS 156.160

PURSUANT TO: KRS [13.082,] 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to establish minimum courses of study and the scope of instruction that may be offered in the different classes of common schools, and to

establish the minimum requirements for graduation from the courses offered. This regulation implements that duty.

Section 1. Pursuant to the authority vested in the State Board of Education by KRS 156.070 and 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as amended on *July 9, 1984* [May 10, 1983], is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Copies may be obtained from the *Office of Instruction*, Department of Education.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 9, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1984, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley Manning
(1) Type and number of entities affected: 180 school districts.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives submitted
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The Program of Studies reflects programmatically the funding allocations provided in the 1984-86 Biennial Budget approved by the Kentucky General Assembly.

Tiering:
Was tiering applied? No. There is a need for uniformity.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 10:022. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160
PURSUANT TO: KRS [13.082,] 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt rules and regulations relating to grading, classifying, and accrediting all common schools. This regulation implements this duty by prescribing general standards to be used in evaluation of elementary, middle and secondary schools.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.070 and 156.160, the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools, as amended on *July 9, 1984* [April 12, 1983], are presented herewith for filing with the Legislative Research Commission, and incorporated by reference. The Standards for Accrediting Kentucky Schools, 1980-81, shall remain in effect through the 1984-85 school year for those districts which cannot, because of time and personnel contraints on the Superintendent of Public Instruction, be assessed by the Department of Education under the new standards until the 1985-86 school year, and said accreditation standards are also incorporated herein by reference.

Section 2. "The Merit Rating Procedural Information and General Criteria for Guidance Programs" and "Merit Rating Guidelines for Kentucky Schools," as adopted on *July 9, 1984* [January 12, 1982], are presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section 3. A copy of all documents incorporated in this regulation may be obtained from the Department of Education.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 9, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 30, 1984, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald, James Fouche
(1) Type and number of entities affected: 180 local school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives submitted

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. There is a need for uniformity.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation program approval.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082,] 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel *are* [is] amended by the selective revision of certain standards, the deletion of certain standards, and by the addition of other new standards, and the amended document is hereby incorporated by reference and indentified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised *July, 1984* [October 1983]. A copy of this document can be obtained from the *Office* [Bureau] of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing at least five days before the hearing is scheduled the following office: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald, James Fouche

(1) Type and number of entities affected: Twenty-four (24) teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No appreciable change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposals represent the most desirable of alternatives.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This regulation revision incorporates (1) minor revisions in existing programs of teacher preparation-certification, and (2) deletion of outdated materials.

Tiering:
Was tiering applied? No. The regulation ultimately applies to individual teacher candidates who must satisfy the same curriculum requirements for certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:070. Provisional high school certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082, 156.030,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to a particular certificate on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate *for teaching in the secondary grades* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

Section 1. (1) The provisional high school certificate shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The provisional high school certificate shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth-year program.

(3) *Except as hereinafter provided,* the provisional high school certificate shall be valid for teaching in grades seven (7) through twelve (12).

(4) Effective September 1, 1989, the certificate described in this regulation shall be renamed the provisional certificate for teaching in the secondary grades 9-12, and this new certificate shall be valid only for teaching in grades nine (9) through twelve (12).

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No appreciable change
(2) Effects on the promulgating administrative body: No appreciable change
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revision to all teacher education institutions and to all local school districts.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed regulation is the most desirable alternative to the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:076. Elementary teacher's endorsement for middle grades.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to par-

ticular certificates on the basis of standards and procedures recommended by the council and approved by the board. This regulation establishes the *endorsement of an elementary certificate for teaching in the middle grades and relates to the corresponding* standards and procedures *for program* [which are to be used for the] approval *as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel* [of the various teacher preparation programs offered by the colleges and universities].

Section 1. An endorsement for classroom teaching in the middle grades, *four (4) through eight (8)* [five (5) to nine (9)], shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who holds a certificate valid for classroom teaching in the elementary grades and who has completed the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 2. (1) A one (1) year endorsement for classroom teaching in the middle grades 4-8 shall be made upon recommendation of the local school superintendent for an applicant who has completed at least six (6) semester hours of credit from the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) As a prerequisite for a one (1) year endorsement, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification, 704 KAR 20:120.

(3) Such a one (1) year certificate endorsement may be renewed for subsequent one (1) year periods upon completion of six (6) semester hours additional credit each year from the approved program.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Institutions must file descriptions of the new program with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposal is the most desirable alternative to the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:078. High school teacher's endorsement for middle grades.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes the *endorsement of a high school certificate for teaching in the middle grades and relates to the corresponding* standards and procedures *for program* [which are to be used for the] approval *as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel* [of the various teacher preparation programs offered by the colleges and universities].

Section 1. An endorsement for classroom teaching in the middle grades, *four (4) through eight (8)* [five (5) to nine (9)], shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who holds a certificate valid for classroom teaching at the high school level and who has completed the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

Section 2. (1) A one (1) year endorsement for classroom teaching in the middle grades 4-8 shall be made upon recommendation of the local school superintendent for an applicant who has completed at least six (6) semester hours of credit from the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) As a prerequisite for a one (1) year endorsement, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification, 704 KAR 20:120.

(3) Such a one (1) year certificate endorsement may be renewed for subsequent one (1) year periods upon completion of six (6) semester hours additional credit each year from the approved program.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Institutions must file description of the new program with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposal is the most desirable alternative to the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:080. Provisional middle grades certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate *for teaching in the middle grades* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teaching in the middle grades *4-8* shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*

(2) The provisional certificate for teaching in the middle grades *4-8* shall be issued initially for a duration period

which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of the planned fifth-year program.

(3) The provisional certificate for teaching in the middle grades *4-8* shall be valid for teaching in grades *four (4)* [five (5)] through *eight (8)* [nine (9)] and shall be endorsed for grades nine (9) through twelve (12) for any subject assignments in which the teacher holds a regular high school teaching major or minor *or area of concentration.*

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be some change-over costs in shifting resources from the "old" program to the development of a new program. Thereafter, the overall costs should be about the same.
2. Continuing costs or savings: Little or none after the change-over period.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Teacher education institutions must file descriptions of the new preparation program for middle grade teachers with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation proposes an alternative which is considered more desirable than the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:090. Provisional elementary certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS [13.082, 156.030,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate *for teaching at the elementary level,* and relates to the corresponding standards and procedures for program approval as included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel.

Section 1. (1) The provisional elementary certificate shall be issued in accordance with the pertinent Kentucky statutes and State Board *of* [for Elementary and Secondary] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky *Standards* [State Plan] for the [Approval of] Preparation- [Programs for the] Certification of Professional School Personnel *as adopted in 704 KAR 20:005.*
(2) The provisional elementary certificate shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year-program.
(3) The provisional elementary certificate shall be valid for teaching in grades one (1) through eight (8).
(4) Effective September 1, 1989, the issuance of new provisional elementary certificates as described in this regulation shall be discontinued. Effective with the 1986-87 academic year teacher candidates shall not be admitted to the preparation program leading to the provisional elementary certificate, but instead the teacher education institution shall advise and guide them into any one (1) of the three (3) preparation options: provisional certificate for

teaching in the early elementary grades K-4, the provisional certificate for teaching in the middle grades 4-8, the provisional certificate for teaching in the secondary grades 9-12.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local districts which employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No appreciable change
(2) Effects on the promulgating administrative body: No appreciable change
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revision to all teacher education institutions and to all local school districts.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed regulation is the desirable alternative to the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:285. Deletion of certification information.

RELATES TO: KRS 161.020, 161.025, 161.030, *161.115*
PURSUANT TO: KRS [13.082,] 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of approved teacher education programs [, but no legal procedure exists whereby a teacher or other professional school person may voluntarily have a portion of his or her teacher certification withdrawn from the official record when he or she feels no longer qualified in the broad areas of certification]. This regulation provides *the procedure, in keeping with KRS 161.115,* [a means within certain limitations] whereby a teacher may have a portion of the total teacher certification record deleted and [establishes] the *procedure* [provisions] for the restoration of the deleted portion if desired at a later date.

Section 1. *Once teacher certification is issued, application for the deletion of any portion of the teacher certification as provided by KRS 161.115 shall be made by means of forms provided by the Department of Education which shall include provisions for the verification by affidavit and through the appropriate employing school district of the applicant's present teaching assignment and of the teaching experience for the three (3) school years immediately preceding.* [The holder of any type of Kentucky teacher certification issued by the Department of Education may voluntarily have any certificate, certificate endorsement, or subject specialization deleted from the official certification record upon request, subject to the following provisions:]

[(1) The request shall be submitted via the superintendent of the employing school district and must contain a recommendation to the Department of Education on forms provided by the department within thirty (30) days, between September 1 and December 1, and if approved by said department, shall become effective on the following July 1. Concurrent with notification to the applicants, the department shall notify each school district of decertification affecting its personnel on or before February 1 of the year in which the decertification is to become effective.]

[(2) No portion of the certification shall be deleted for any subject or assignment in which the teacher has had experience during the five (5) year period preceding the request in an amount equivalent to one (1) year of full-time employment (140) days during which at least one (1) period per day was in the subject or assignment corresponding to the portion of the certification requested for deletion.]

[(3) If the certification for classroom teaching at the secondary level is to be retained, at least one (1) teaching major or one (1) area of concentration must be retained.]

[(4) A certificate which is a prerequisite or a concurrent requirement to the issuance of another certificate or certificate endorsement must be retained.]

[(5) Requests for restoration of previously deleted areas of certification shall be submitted via the superintendent of the employing school district and shall show restored competency and proficiency by completion of twelve (12) semester hours of credit pertinent to the deleted areas as

prescribed by an institution approved for teacher education. If the applicant is not under contract at the time of this application for restoration, the application shall be submitted directly to the Department of Education along with evidence of completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by an institution approved for teacher education.]

Section 2. In the event that an applicant desires restoration of any certification that has been removed under the provisions of KRS 161.115, the application shall be made upon forms provided by the Department of Education and the application shall be accompanied by official transcripts showing the completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by the teacher education institution and as required by the statute.

Section 3. Whenever any action is taken to delete any portion of teacher certification or to restore any portion of teacher certification, the employing school district shall be notified of such action at the same time as the applicant, and in the case of deletion of certification, such shall occur on or before February 1 following submission of the application.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: Provisions is optional for any of the 100,000 more or less persons who hold valid teacher certification in Kentucky.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No appreciable change—just file request form.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None; however, regulation is being revised to comply with new statute, KRS 161.115.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Although this was a rather new regulation, the subsequent passage of KRS 161.115 warrants a revision, particularly to remove material from regulation that is rather explicit in the statute.

Tiering:
Was tiering applied? No. Not applicable; regulation applies to individual certificate holders.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Rehabilitation
(Proposed Amendment)

706 KAR 1:010. Three-year plan for vocational rehabilitation services.

RELATES TO: KRS 156.010, 156.031, [156.070,] 163.140, 163.160
PURSUANT TO: KRS [13.082,] 163.140
NECESSITY AND FUNCTION: Section 101, Title I, P.L. 93-112, as amended, requires the submission of an Interim Three-Year State Plan for Vocational Rehabilitation Services, to the Secretary, *United States* Department of Education. The plan must be approved in order for a state to be eligible for grants from the allotments of funds under Title I, P.L. 93-112, as amended by P.L. 93-516 and P.L. 95-602, *and P.L. 98-221*, and this regulation adopts the pertinent state plan developed and approved by the Department of Education and setting forth rules governing the services, personnel, and administration of the *Office* [Bureau] of *Vocational* Rehabilitation [Services].

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 163.140, the revised Kentucky State Plan for Vocational Rehabilitation Services for the period October 1, 1982 through September 30, 1985, effective October 1, *1984 as revised July 10, 1984* [1983], is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. A copy of said plan can be obtained from the *Office* [Bureau] of *Vocational* Rehabilitation [Services], Department of Education.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Regulations pertain to vocational rehabilitation to

28,603 disabled Kentuckians served by this program annually.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: Monies for this program are based on 80/20 match with the United States Department of Education, Rehabilitation Services Administration. The Kentucky legislature has appropriated funding through state fiscal year 1986.

(a) Direct and indirect costs or savings:

1. First year: No additional costs saving.
2. Continuing costs or savings: Expenditures will remain stable
3. Additional factors increasing or decreasing costs: No additional costs savings

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Office policies filed as regulation to enhance consistency in statewide application as pertains to disabled applicants for the program.

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

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation concerns eligible disabled population of the Commonwealth. Tiering is not applicable when regulations pertain to individuals.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 15:010. Variable annuity contracts.

RELATES TO: KRS *304.7-240, 304.9-160,* 304.15-390
PURSUANT TO: KRS *Chapter 13A* [13.082], 304.2-110, *304.15-390*

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. *KRS 304.15-390 provides that the commissioner may promulgate regulations controlling the sale and issuance of variable contracts.* This regulation sets forth the requirements on variable annuity contracts.

Section 1. Scope and Definitions. (1) The term "variable contract," when used in this regulation, shall mean any contract which provides for annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such contract, as provided for in KRS 304.15-390.

(2) "Agent," when used in this regulation, shall mean any person, corporation, partnership, or other legal entity which under the laws of this state is licensed as a life insurance agent.

[(3) "Variable contract agent," when used in this regulation, shall mean an agent who shall sell or offer to sell any variable contract.]

[(4) The "securities examination" called for by subsection (2) of Section 8 shall include any of the following:]

[(a) Any state securities sales examination accepted by the Securities and Exchange Commission;]

[(b) The National Association of Securities Dealers, Inc. Examination for Principals, or Examination for Qualification as a Registered Representative;]

[(c) The various securities examinations required by the New York Stock Exchange, the American Stock Exchange, Pacific Stock Exchange, or any other registered national securities exchange;]

[(d) The Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934.]

Section 2. Qualification of Insurance Companies to Issue Variable Contracts. (1) No company shall deliver or issue for delivery variable contracts within this state unless:

(a) It is licensed or organized to do a life insurance or annuity business in this state; and

(b) The commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider, among other things:

1. The history and financial condition of the company;
2. The characer, responsibility and fitness of the officers and directors of the company; and
3. The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

(2) If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of subsection (1)(b) of this section if either it or such admitted life company satisfies the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to subsection (1)(b) of this section.

(3) Before any company shall deliver or issue for delivery variable contracts within this state it shall submit to the commissioner:

(a) A general description of the kinds of variable contracts it intends to issue.

(b) If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts; and

(c) If requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

Section 3. Separate Account or Separate Accounts. A domestic company issuing variable contracts shall establish one (1) or more separate accounts pursuant to KRS 304.15-390, subject to the following provisions of this section:

(1) (a) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in paragraph (b) of this subsection.

1. Amount allocated to any separate account and accummulations thereon may be invested and reinvested

without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; and

2. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(b) Reserves for:

1. Benefits guaranteed as to dollar amount and duration; and

2. Funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of such separate account at least equal to such reserve liability is invested in accordance with the laws and regulations of this state governing the investments of life insurance companies. Such portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(c) With respect to seventy-five (75) percent of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any insurer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market would exceed ten (10) percent of the market value of the assets of said separate account; provided, however, that the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(d) Unless otherwise permitted by law or approved by the commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any insurer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than ten (10) percent of the total issued and outstanding voting securities of such insurer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interest in such accounts.

(e) The limitations provided in paragraphs (c) and (d) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with paragraphs (c) and (d) of this subsection.

(2) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in subsection (1)(b) of this section shall be valued in accordance with the rules otherwise applicable to the company's assets.

(3) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(4) Notwithstanding any other provisions of law a company may:

(a) With respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or

(b) With respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others to manage such separate account and the investment of its assets.

(c) With respect to any separate account registered with the Securities and Exchange Commission, a company, committee, board or other body may make such other provisions as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

(5) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the tranfer is made, and unless such transfer, whether into or from a separate account is made by a transfer of cash, or by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other tranfers among such accounts if, in his opinion, such transfers would not be inequitable.

(6) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

(7) Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate accounts committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly, any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Section 4. Filing of Contracts. The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance an annuity contract form filings to the extent appropriate.

Section 5. Contracts Providing for Variable Benefits. (1) Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

(2) Illustrations of benefits payable under any variable contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

(3) No individual variable contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provision or provisions which in the opinion of the commissioner are more favorable to the holders of such contracts:

(a) A provision that there shall be a period of grace of thirty (30) days or of one (1) month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

(b) A provision that, at any time within three (3) years from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue paymets and indebtedness shall be applied to produce the values under the contract arising therefrom;

(c) A provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(4) Any variable contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract.

(a) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable contract:

1. The annual net investment increment assumption shall not exceed five (5) percent, except with the approval of the commissioner;

2. To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a lower life expectancy at any age, or, if approved by the commissioner, from another table.

(b) "Expense," as used this subsection, may exclude some or all taxes, as stipulated in the contract.

(5) The reserve liability for variable contracts shall be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Section 6. Required Reports. (1) Any company issuing individual variable contracts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the insurance commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

(2) Any company issuing individual variable contracts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement reporting as of a date not more than four (4) months previous to the date of mailing, in the case of an annuity contract under which payments have not yet commenced:

(a) The number of accumulation units credited to such contract and the dollar value of a unit; or

(b) The value of the contract holder's account.

Section 7. Foreign Companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by this regulation, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with this regulation.

Section 8. *No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the Kentucky Insurance Code as life insurance agent with respect to the insurer, and while meeting federal law requirements for dealing in securities.* [Examination of Agents and Other Persons. (1) (a) No agent shall be eligible to sell or offer for sale a variable contract unless prior to making any solicitation of sale of such a contract, he also be licensed as a variable contract agent.]

[(b) Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.]

[(2) The licensing as a variable contract agent shall not become effective until such agent shall have satisfactorily passed written examinations upon securities and variable contracts. One (1) examination shall be on securities generally and shall be one of the examinations listed in Section 1(4). The other shall deal with variable contracts and shall be composed of at least fifteen (15) questions, but not more than fifty (50) questions, concerning the history, pur-

pose, regulation, and sale of variable contracts.]

[(3) The examination on variable contracts will be given in such places and at such times as the commissioner shall from time to time designate. Upon application for license as a variable contract agent, the applicant shall be notified of the date of the next examination.]

[(4) Every applicant for license as a variable contract agent shall be required, at the time of application, to present evidence that the applicant:]

[(a) Has previously passed an examination listed in Section 1(4) of this regulation; or

[(b) Is currently registered with the Federal Securities and Exchange Commission as a broker-dealer, or is currently associated with a broker-dealer and has met qualification requirements with respect to such association.]

[(5) Every applicant applying for license as a variable contract agent shall satisfactorily complete the variable contract examination required by subsection (2) of this section, with a grade of at least seventy (70) percent, or shall present evidence of successful completion of either a variable contract examination given under the supervision of an insurance department of any state or territory of the United States which has adopted an examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners or has been examined and licensed by any such department prior to its adoption of the National Association of Insurance Commissioners Model Regulation.]

[(6) Any applicant failing to pass the variable contract examination may take it again twenty (20) days after the first and any subsequent examinations.]

[(7) Every application for a license as a variable contract agency shall be accompanied by an examination fee of ten (10) dollars. A fee of five (5) dollars will be charged for each re-examination administered to an applicant.]

[(8) Report of the results of any examination given pursuant to this regulation shall be made by the department on "Commissioner's Report of Examination No." (see Section 10 of this regulation).]

[(9) Except as modified by this regulation, the regulations of this department governing the licensing of life insurance agents including examinations therefor shall apply hereto.]

[(10) (a)Results of the examination administered pursuant to subsection (2) of this section will be reported by this department to the applicant's company. In addition, examination results will be reported by this department to any other state insurance department requesting confirmation of the examination grade, either upon request of such department or upon request of the applicant or his company.]

[(b) A charge of fifty (50) cents shall be made for the second and each subsequent report of examination results.]

[(11) Records of the examination grade of each applicant upon an examination administered by this department, or upon an examination administered by another agency or authority and reported to this department, will be retained in the file pertaining to said applicant.]

[(12) Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:]

[(a) Any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other state or territory of the United States.]

[(b) The imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him by any national securities exchange, or national securities association, or any federal or state or territorial agency with jurisdiction over securities or contracts on a variable basis.]

[(c) Any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.]

[(13) The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.]

[(14) Renewal of a variable contract agent's license shall follow the same procedure established for renewal of an agent's license to sell life insurance contracts in this state.]

[(15) Any agent applying for a license as a variable contract agent shall do so by filing with this department "Uniform Form AP for Securities Salesmen, Variable Contract Salesmen and Other Associated Persons."]

Section 9. Exemptions. This regulation shall not apply to a deposit administration or similar contract pursuant to which a separate account is established in connection with the employee pension, retirement or profit-sharing plan of the insurer and/or its affiliates.

[Section 10.

COMMISSIONER'S
REPORT OF EXAMINATION NO._____

STATE OF KENTUCKY
DEPARTMENT OF INSURANCE

APPROVAL OF LICENSE AS A VARIABLE CONTRACT AGENT

_____
Name of Applicant

_____
Address

When validated by the Department of Insurance, this will be your notice of approval of your qualification for a variable contract agent's license.

Enter Name and Address of broker or dealer and of the company to which approval of Application for Variable Contract Agent's license should be directed.

_____
Broker-Dealer

_____
Address

_____
Company

_____
Address

LICENSE APPROVED
Date

_____
Commissioner

TEST SCORE:

Variable Contracts]

GIL McCARTY, Commissioner
M. H. WILSON, Secretary
APPROVED BY AGENCY: July 9, 1984
FILED WITH LRC: July 12, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on the proposed regulation will be held on August 21, 1984, at 10 a.m. in the offices of the Department of Insurance, 229 West Main Street, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Gil McCarty, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Persons may submit written comments to the above address.

REGULATORY IMPACT ANALYSIS

Contact Person: Patrick Watts, Counsel, (502) 564-6036

Need For the Proposed Amendment: The proposed amendment is needed to remove unnecessary regulatory requirements relating to the sale of variable annuities. The proposed regulation deletes the requirement that persons selling variable annuities hold a special agent's license from the department. Pursuant to statutory changes made by the 1984 General Assembly (1984 Ky. Acts, c. 322, section 6, eff. July 13, 1984), the department has determined that this license serves no valid regulatory purpose. Under the proposed amendment, any life insurance agent licensed by the Department of Insurance may sell variable annuities as long as the agent meets the requirements of federal law relating to dealing in securities.

Type and Number of Entities Affected: The proposed amendment will affect the 94 insurers issuing variable annuities in Kentucky because they will no longer have to license their agents especially to write variable annuities. The 2,300 persons currently licensed as variable annuity agents will not have their licenses renewed when they expire on April 1, 1985.

1. Direct and Indirect Cost or Savings to Those Affected: The proposed regulation will mean svings to insurers and agents because they will no longer have to pay the $40.00 biennial licensing fee.

2. Reporting and Paperwork Requirements: The proposed amendment will reduce the paperwork requirements because no one will have to apply for a special license in order to be an agent for the sale of variable annuities.

Effects on the Promulgating Administrative Body: The proposed amendment will reduce the paperwork and reporting requirements of the department because a license is being eliminated. As noted ahove, the department will not renew the licenses of the 2,300 variable annuity agents when they expire on April 1, 1985.

Assessment of Anticipated Effect on State and Local Revenues: The proposed amendment eliminates a license fee. Therefore, there will be a reduction in revenue.

Assessment of Alternative Methods; Reasons Why Alternatives Were Rejected: The variable annuity agent's license has been in existence for some time. It originated as part of state regulatory schemes to control variable annuities. At that time, variable annuities were regarded to be an exotic, if not dangerous, product which required tight control. Experience has shown that, at least as to the requirement of a special agent's license, this control is no longer warranted.

Statutes, Rules, Regulations, or Governmental Policies Which May Conflict, Overlap, or Duplicate the proposed regulation: None

Tiering

Tiering was not applied in this case due to the technical nature of the proposed amendment, that is, to eliminate a certain type of license issued by the Department of Insurance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Thrift Institutions
(Proposed Amendment)
808 KAR 3:050. Conduct.

RELATES TO: KRS *290.070, 290.100, 290.225, 290.585, 290.715* [290.020, 290.030, 290.040, 290.050]
PURSUANT TO: KRS 290.070
NECESSITY AND FUNCTION: KRS 290.070 requires the Department of *Financial Institutions* [Banking and Securities] to prescribe rules and regulations for the proper conduct and regulation of credit unions. This regulation is to assure the proper conduct of credit unions.

[Section 1. Definitions. As used in this chapter:]

[(1) The term "department" means the Department of Banking and Securities of the Commonwealth of Kentucky.]

[(2) The term "commissioner" means the Commissioner of the Department of Banking and Securities.]

[(3) The term "Act" means the Kentucky Credit Union Act (Chapter 290 of the Kentucky Revised Statutes, as amended).]

[(4) The term "Federal Credit Union" means a credit union organized under the provisions of the Federal Credit Union Act (73 Stat. 628, 12 U.S.C. 1751-1772).]

[Section 2. Organization and Operation of Credit Unions. (1) Persons desiring to form a credit union shall submit, in triplicate, on forms prescribed by the department, proposed Articles of Incorporation. Articles of Incorporation shall be subscribed to before an officer competent to administer oaths by not less than eight (8) natural persons who have a common bond of occupation, or association, or are within a well defined neighborhood, community, or rural district, and shall specifically state:]

[(a) The proposed name of the association.]

[(b) The location of the proposed credit union and the territory in which it will operate.]

[(c) The names and addresses of the subscribers to the Articles of Incorporation and the number of shares subscribed by each.]

[(d) The par value of shares, which shall be five dollars ($5) each.]

[(e) The proposed field of membership, specified in detail.]

[(f) The term of existence of the corporation, which may be perpetual.]

[(g) The name and address of the person named as agent for the service of process.]

[(h) The fact that these Articles of Incoporation are filed to enable such persons to avail themselves of the advantages of the Kentucky Credit Union Act, as amended.]

[(i) Copies of the form of Articles of Incorporation may be obtained from the department.]

[(2) Five (5) executed copies of the proposed Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in the amount of fifteen dollars ($15) in payment of the Articles of Incorporation filing fee. The commissioner will investigate and make recommendations

as to whether the proposed articles conform to the Act; as to the general character and fitness of the subscribers thereto and as to the economic advisability of establishing the proposed credit union. The commissioner shall approve or disapprove the proposed organization, and if approved the Certificate of Incorporation shall be the Charter of the state credit union. If the organization is disapproved, the incorporators shall be notified of the basis for such action and the Articles of Incorporation fee shall be returned to them.]

[Section 3. Standard Form of Bylaws. (1) Proposed bylaws, in form and content approved by the commissioner, shall be submitted by the incorporators to the commissioner for his approval at the time of submitting the Articles of Incorporation to the department.]

[(2) Specimen copies of the standard form of bylaws may be obtained from the Department of Banking and Securities, Frankfort, Kentucky 40601.]

[Section 4. Amendments to the Bylaws of a Credit Union May Be Adopted. Amendments to the Articles of Incorporation may be adopted as provided in the Kentucky Business Corporation Act. No amendment of the bylaws or of the Articles of Incorporation shall become effective, however, until approved, in writing, by the commissioner. Five (5) executed copies of the proposed amendments to the Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in payment of the amendment to the Articles of Incorporation fee of fifteen dollars ($15).]

[Section 5. Loans by Credit Unions to Other Credit Unions. Based on a resolution of its board of directors, a credit union may lend its funds to other state-chartered credit unions or to federal credit unions in the total amount not exceeding twenty-five (25) percent of its paid-in and unimpaired capital and surplus. The terms of such loans shall not exceed one (1) year and the rate of interest shall not exceed that established in the Act. Prior to making the loan, the credit union shall require the borrowing credit union to furnish the following:]

[(1) A current financial report;]

[(2) A copy of the latest supervisory committee audit report;]

[(3) A certified copy of the resolution of the board of directors authorizing such borrowing; and]

[(4) A certificate from the secretary of the borrowing credit union that the persons negotiating the note are officials of the credit union and are authorized to act in its behalf, and that such borrowing does not exceed the maximum borrowing power of the borrowing credit union.]

[Section 6. Retirement Benefits for Employees of Credit Unions. Credit unions may make provision for reasonable retirement benefits for employees and for officers who are compensated in conformance with the Act and bylaws, but no credit union shall undertake to directly administer its own retirement plan as trustee. A copy of said retirement plan shall be submitted for the prior approval of the Commissioner.]

Section *1.*[7.] Refund of Interest. When an interest refund is authorized by the board of directors pursuant to the Act, it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section *2.*[8.] Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Banking and Securities.

Section *3.*[9.] Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.

(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.

(3) The schedule of examination fees shall be as follows:

(a) Newly organized credit unions. No fee will be charged a newly organized credit union for the first examination made within a year of the date of its organization being approved.

(b) Credit unions with assets of less than $25,000; a fee of $100.

(c) Credit unions with assets of $25,000 to $500,000; a fee of $100 plus $1.20 per $1,000 of assets over $25,000.

(d) Credit unions with assets of $500,000 to $1,000,000; a fee of $670 plus $.60 per $1,000 of assets over $500,000.

(e) Credit unions with assets of over $1,000,000; a fee of $970 plus $.30 per $1,000 of assets over $1,000,000.

Section 4. Fidelity Bond. (1) Every credit union shall, by July 1, 1985, purchase a blanket fidelity bond to protect the credit union against losses caused by the occurrences covered therein. The minimum amount of such bond shall be the amount set out in 12 CFR 701.20, effective February 15, 1978. Copies of 12 CFR 701.20 may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year, in order to ascertain its adequacy in relation to risk exposure.

Section 5. Stocks and Bonds. Credit unions may invest, up to a maximum of five (5) percent of members shares in:

(1) Stocks of corporations rated A+ in the June 1984 issue of Standard and Poore's Corporation Security Owners Stock Guide; and

(2) Corporate bonds rated AAA or higher in the June 1984 issue of Standard and Poore's Corporation Bond Guide. Copies of the Guides may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 6. Risk Assets. Risk assets, for the purpose of establishing the regular reserve, shall be defined as set out in 12 CFR 700, effective July 14, 1980. Copies of 12 CFR 700 may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 7. Charitable Contributions. The board of directors may authorize contributions to civic, charitable or service organizations, each contribution not to exceed $100.

Section 8. Conversions. A state-chartered credit union may convert to another charter by complying with the following procedures:

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the

proposed conversion shall be given to all members, including the reasons for the proposed conversion. The notice may be mailed or hand delivered to the members. The notice shall set forth the date and place for this meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow absentee ballots.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

BALLARD W. CASSADY, JR., Commissioner
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 1 p.m. EDT, in the offices of the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing no later than August 16, 1984: J. Rick Jones, Esq., Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ella Robinson
(1) Type and number of entities affected: 97 state-chartered credit unions
(a) Direct and indirect costs or savings to those affected:
1. First year: Cost unknown, dependent on cost of fidelity bond for those credit unions which did not already have bonds.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $100 cost of Standard and Poore's Guides
2. Continuing costs or savings: Guides must be purchased each year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments required by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
Tiering:
Was tiering applied? No. Uniform application to all state-chartered credit unions.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Conduct of Credit Unions
SPONSOR: Department of Financial Institutions
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Expenditures: Increased department expenditures approximately $100 per year.
MEASURE'S PURPOSE: Amend regulation to conform to laws passed by 1984 Session of the General Assembly.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
PREPARER: J. Rick Jones

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 7:010. Administration and enforcement.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for construction of all buildings in the state. This regulation establishes the administration and enforcement sections of the Kentucky Building Code.

Section 1. Definitions used in Title 815, Chapter 7. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.
(2) "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any human occupancy, whether infrequent or regular. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a mobile home, or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if such farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.
(3) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.
(4) "Department" means the Department of Housing, Buildings and Construction.
(5) "Industrialized building system" or "building system" means a structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at a building site in Kentucky. "Industrialized building system" includes: a building of any size or for any use all or any component part of which is of

closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(6) "KBC" means the Kentucky Building Code as established in this chapter.

(7) "Major structural change" means *structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the extent/value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.* [alterations or repairs made within any period of twelve (12) months, costing in excess of fifty (50) percent of the physical value of the structure, as determined by a comparison of the BOCA chart of construction costs and the value of the structure as established by the tax records of the county in which the property is located.]

(8) "Person" means a person, partnership, corporation or other legal entity.

(9) "Single family dwelling" means one (1) unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(10) "Trade or brand name house" means any single structure made of precut or prefabricated panels, sections or individual pieces that are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure he makes, and that are assembled on a permanent foundation by conventional homebuilding and electrical and plumbing installation techniques.

(11) "Fire official" means the chief of the fire department or of the fire prevention bureau, or if there is not a jurisdiction fire department or fire prevention bureau, such officer as shall be designated by the appointing authority of the jurisdiction, or his duly appointed representative, to enforce the provisions of KRS 227.300 and 815 KAR 10:020.

Section 2. Scope. This regulation shall supersede any and all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) The KBC shall control all matters concerning the construction, alteration, addition, remodeling, use and occupancy classifications of all buildings in the state.

(2) Trade or brand name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) The provisions of the KBC relating to single family dwellings, that are not trade or brand name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. However, the state plumbing code and the national electrical code shall be applicable to these units, whether or not the local government passes an ordinance. A local government may not enforce any building code other than the KBC on such units.

(4) Unless otherwise specifically provided within the KBC, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of the KBC.

(5) The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals, when such buildings are judged by the building official to be safe and in the interest of public health, ssafety and welfare regarding any proposed construction, alteration, repair, enlargement, relocation, and location within the fire limits. All such approvals must be based on the applicant's complete submission of professional architectural and engineering plans and specifications bearing the professional seal of the designer.

(6) The KBC shall be construed to secure its expressed intent which is to secure public safety, health and welfare insofar as they are affected by building construction quality, electrical systems, plumbing, energy, boiler safety, handicapped accessibility, life safety from hazards of fire and explosion and other disasters. It is the further expressed intent of this code to avoid duplicative plan review and inspection of new construction and to gather together in one (1) set of regulations all the requirements relating to the construction of buildings in the state to enable builders, owners and building officials to be adequately informed.

Section 3. Applicability. (1) The provisions of the KBC shall cover all matters affecting or relating to buildings, and structures, as set forth in Section 2 of this regulation.

(2) No person shall construct a building or structure, extend, repair, remove or alter in violation of these provisions, except for ordinary repairs as defined in Section 4 of this regulation, and except further that the raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted provided the building or structure is not otherwise altered or its use or occupancy changed.

(3) Any requirement essential for structural, fire or sanitary safety of a building essential for the safety of the occupants thereof, and which is not specifically covered by this code, shall be determined by other regulations of the department or other applicable law.

(4) Any person who violates any provision of the article or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

Section 4. Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the building official; but such repairs shall not include the cutting away of any wall, partition or portion thereof, or the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement or relocation of any standpipe, water supply, sewer or drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health and general safety.

Section 5. Installation of Service Equipment. When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment is specifically controlled by the provisions of this code, it shall be unlawful to use such equipment until a certificate of approval has been issued therefor by the building official or other agency having jurisdiction.

Section 6. *Change Section 101(11) and 106 to read as follows:*

"106.1 Continuation of existing use: (1) The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been heretofore

appro ed may be continued without change, except as may be specifically covered in this code, the existing structures or fire prevention codes set forth in 815 KAR 10:020 or as may be deemed necessary by the building official for the general safety and welfare of the occupants and the public.

106.2 Change in use: It shall be unlawful to make any change in the use or occupancy of any structure or portion thereof which would subject it to any special provisions of this code without approval of the building official; such approval shall be granted if the building official finds that such structure meets the intent of the provisions of law governing building construction for the proposed new use and occupancy, and that such change does not result in any greater hazard to public safety or welfare. In making his decision, the building official may require a written opinion from a design professional.

106.3 Additions, alterations or repairs: Additions, alterations or repairs may be made to any structure without requiring the existing structure to comply with all the requirements of this code, provided such work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings.

Alterations or reparis to an existing structure which are nonstructural and do not adversely affect any structural member of any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed." [Existing Structures. (1) The legal use and occupancy of any structure existing on the effective day of this code or for which it had been heretofore approved, may be continued without change, except as may be specified in this regulation.]

[(2) Existing structures, when altered or repaired, as specified in this section, shall be made to conform with the requirements of the KBC for new structure, only to the extent provided herein.]

[(3) Alterations: All alterations, repairs, and additions except those "ordinary repairs" as defined in Section 4 of this regulation, shall be made in accordance with the terms of the KBC for new structure.]

[(4) Remodeling: Any major structural change, or a change to a more restrictive use group shall cause the entire building to be brought into conformity with the KBC requirements for new structures.]

[(5) Increase in size: If the building is increased in floor area or number of stories, the entire structure shall be made to conform with the requirements of the KBC in respect to life safety.]

[(6) Part change in use: If a portion of the structure is changed to a new more restrictive use group, and that portion is separated from the remainder of the structure with the required vertical and horizontal fire separation assemblies it shall be made to conform to the requirements for the new use and occupancy and the existing portion shall not be subjected to the requirements of the KBC relating to new structures.]

Section 7. Departments of Building Inspection. (1) Each local government singularly or by association with other local governments shall employ a building official or inspector and other code enforcement personnel as necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned by law to it.

(2) All building officials shall be appointed by the chief appointing authority for the respective jurisdictions and shall meet the qualifications for the position which may be established by the appointing authority.

(3) Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all such records shall be open to the public inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

Section 8. Duties and Powers of the Building Official. The local governments shall designate the persons to be charged with the responsibility of enforcing the KBC within its community and it shall neither adopt nor enforce any ordinance regulating buildings which conflicts with the KBC. The local building official shall be responsible for the examination and approval of plans and specifications for the following buildings:

(1) All buildings classified as storage, residential, miscellaneous or temporary occupancies so long as they do not exceed three (3) stories in height or 20,000 square feet of floor area.

(2) All buildings classified as business or mercantile occupancies having a capacity which does not exceed 100 persons, including buildings used for assembly type purposes but having a capacity of less than fifty (50).

(3) All buildings classified as factory or industrial occupancies having a capacity which does not exceed 100 persons.

Section 9. Duties and Powers of the Department. (1) It shall be the responsibility of the department to review plans and specifications, issue permits and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification.

(2) Any local government may petition to the department for additional plan review responsibility. Such petition shall include the evidence of the local governments capability to perform those functions, as required by regulations of the board. Denials of such petitions are appealable to the board.

(3) The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals; and all reports of such inspections shall be in writing and certified by a responsible officer of such authoritative service or by the responsible individual.

(4) The building official or his authorized representative should carry proper credentials of his respective office for the purpose of inspecting buildings and premises and the performance of his duty under this code.

(5) The board shall have the powers as may be necessary in the interest of public safety, health and general welfare, to adopt and promulgate amendments to the code and other rules and regulations which are necessary to implement this code and by means of the appeals board pro-

cedures to issue interpretations which shall be binding upon the appellee and the building officials. The building official shall implement the provisions of this code to secure the intent thereof.

(6) In the absence of provisions not specifically contained in this code or approved rules and orders, the regulation, specifications and standards listed in Appendix B, "Accepted Engineering Practice," and Appendix C, "Accredited Materials Standards" of the 1978 Edition of BOCA, Inc., filed herein by reference, shall be deemed to represent accepted engineering practice with respect of materials, equipment, system or method construction therein specified, and shall therefore be acceptable.

Section 10. New Materials and Modifications. (1) It is the purpose of the KBC to set forth performance objections so as to facilitate new technologies, techniques and materials; therefore, alternate materials and equipment may be used provided such an alternative has been tested and listed by nationally recognized testing and research laboratories approved by the board.

(2) The building official may accept supporting data to assist him in his determinations: duly authenticated research reports from BOCA, Inc., or from other approved authenticated sources for all materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials, equipment and devices may be used provided they have been retested and placed in good and proper working condition and approved by the building official.

(4) When there are practical difficulties involved in carrying out structural or mechanical provisions of this code or of an approved rule, the building official having plan review responsiblity may vary or modify such provision upon application of the owner or his representative only if the spirit and intent of the law shall be observed and equivalent safeguards provided. The application for modification and the final decision of the building official shall be in writing. When a modification is granted by a local building official, a copy of the application and the decision shall be forwarded to the department and the local fire official.

(5) The board may withdraw authority for plan review from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.

Section 11. Inspections. (1) Before issuing a permit the appropriate building officials may examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit required by this code. No construction shall begin on buildings covered by this regulation until a local building official has issued a permit for such construction and an official representing the department has issued a permit (if it has plan review responsibility).

(2) After issuing a building permit for a building over which he has plan review responsiblity the building official shall conduct inspections from time to time during and upon completion of work and he shall maintain a record of all such examinations and inspections and of all violations of the KBC.

(3) The building official may accept reports of approved inspection services which satisfy the requirements of the appropriate governmental entity.

(4) Inspections for KBC compliance of trade or brand name homes shall be the responsibility of the local building official.

(5) In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:020. The local building official shall be responsible to inspect such system only for location under applicable local ordinances.

(6) Upon completion of the building, the owner or agent of the facility shall request a final inspection; the building official shall set a time for said inspection and notify the owner or agent. If compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this regulation. If compliance has not been achieved, any violations shall be noted and immediately communicated to the owner or agent and the fire official.

(7) The building official shall cooperate with the fire official by allowing the fire official to inspect all buildings during construction. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and if a certificate of occupancy is issued contrary to said written recommendations the building official shall give written notification of his decision to the fire official and the department at once.

Section 12. Right of Entry. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that such building is constructed in compliance with the Kentucky Building Code, and the inspector may enter upon the premises during any reasonable hour.

Section 13. Application for Permit Required. (1) It shall be unlawful to construct, enlarge, or alter a structure; or change the type of occupancy of a building requiring greater strength, exiting or sanitary provisions; or to change to another use; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building officials in writing and obtaining the required permit therefor; except that ordinary repairs, as defined in Section 4 of this regulation, which do not involve any violation of KBC shall be exempt from this provision.

(2) The application for a permit shall be submitted in writing and in such form as the department may prescribe and shall be accompanied by the required fee.

(3) The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the building official.

(4) Application for permit shall be made by the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(5) The application for the permit shall be accompanied by not less than two (2) copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. When quality of materials is essential for conformity to the KBC, specific information shall be given to establish such quality; and the KBC shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information. The building official may waive the requirement for filing plans when the work involved is of a minor nature.

(6) Site plan: There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey.

(7) Engineering details: The building official may require adequate details of structural, mechanical and electrical work including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how required structural and fire resistance rating integrity will be maintained, and where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(8) An application for permit for any proposed work should be deemed to have been abandoned six (6) months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the building official may grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each.

(9) Subject to the limitations of Section 13 of this regulation, amendments to a plan, application or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; and such amendments shall be deemed a part of the original application and shall be filed therewith.

(10) The building official may revoke a permit or approval issued under the KBC in case of any false statements or misrepresentation in the application or on the plans.

Section 14. Permits Required. (1) The building official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, he shall reject such application in writing, stating the reasons therefor. If he finds that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, he shall issue a permit therefor as soon as practicable.

(2) Any permit issued shall become invalid if the authorized work is not commenced within one (1) year after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been theretofore issued or otherwise lawfully authorized by approved plans, so long as the substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) The building official shall attach his signature to every permit, or he may authorize a subordinate to affix such signature thereto.

(5) The building official shall record and communicate to the owner or agent, the terms and conditions related to his approval to commence construction.

(6) The building official may issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(7) Approved plans: The building official shall stamp or endorse in writing both sets of corrected plans approved, and one (1) set of such approved plans shall be retained by him and the other set shall be available at the building site, open to inspection of the building official or his authorized representative at all reasonable times.

(8) A true copy of the building permit shall be available on the site of operation open to public inspection during the entire time of prosecution of the work and until the completion of the same.

Section 15. Conditions of Permit. (1) A permit shall not be issued until the fees prescribed by the department or the local government have been paid. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) All work shall conform to the appropriate application and plans for which the permit has been issued and any approved amendments thereto and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building.

(3) A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved, except that such revised plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) A permit to begin work for new construction, alteration, removal, or other building operations shall not be issued until the fees prescribed by law shall have been paid to the department or local building department, nor shall an amendment to a permit necessitating an additional fee because of an increase in the estimated cost of the work involved be approved until the additional fee shall have been paid.

(2) The payment of the fee for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections, certificates of use and occupancy or other privileges or requirements, both within and without the jurisdiction of building inspection.

(3) The fee for building permits and other functions performed pursuant to KRS Chapter 198B may be designed to fully cover the cost of the service perform[illegible]d; and the

department and each local government is authorized to establish by approved rules or ordinances a schedule of unit rates for buildings and structures of all use groups and type of construction as classified and defined in the KBC.

Section 17. Certificate of Use and Occupancy. (1) No building on which site preparation and assembly were begun, after the Kentucky Building Code becomes effective as to that building, shall be occupied until the appropriate building official issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Kentucky Building Code, or assembled or installed in conformance with applicable instructions; except that:

(a) A building for which a permit was legally granted prior to the effective date of the KBC may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.

(b) A building for which plans were prepared at least three (3) months prior to the effective date of the KBC and upon which construction was begun prior to the effective date of the KBC in a locality not then requiring a building permit may be completed and occupied without a building permit.

(2) A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another or to a different use within the same use group, in whole or part, and a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued by the building official, certifying that the work has been completed in accordance with the provisions of the approved permit; except that any use or occupancy, which was not discontinued during the work alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is secured from the building official.

(3) After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted to another prohibited use shall be deemed a violation of this code.

(4) Upon the request of the holder of a permit, the building official may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(5) When a building or structure is entitled thereto, the building official shall issue a certificate of use and occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which the building may be used in its several parts. The certificate of use and occupancy shall specify the following information from the 1978 edition of the BOCA Basic Building Code: the use group, in accordance with the provisions of Article 2; the fire grading as defined in Article 2 and Table 902; the maximum live load on all floors as prescribed in Article 7; the occupancy load in the building and all parts thereof as defined in Article 2 and Article 6; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use (use groups B, F, H, M, and S) as defined by the KBC shall be posted on all floors by the owner with a suitably designed placard in a form designated by the department, which shall be securely fastened to the structure in a readily visible place, stating: the use group, the fire grading, the live load and the occupancy load.

(2) Every room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be maintained in a legible manner by the owner or his authorized agent. Signs shall be durable and shall indicate the number of occupants permitted for each room use.

(3) All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code.

(2) The building official shall serve a notice of violation or order on the person responsbile for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detail statement or a plan approval thereunder, or in violation of a permit or certificate issued under the provisions of this code; and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) Violation of penalties: Any person who shall violate a provision of the KBC or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or proper direction of the building official, or of a permit or certificate issued under the provisions of the KBC, shall be subject to such penalties as may be provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief: The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) No person shall hinder an inspector enforcing any of the provisions of this code in the performance of his lawful duties under this chapter.

Section 20. Notice to Owner. (1) Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or

in an unsafe and dangerous manner, such work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work may be resumed.

(2) Unlawful continuance: Any person who shall continue any work in or about the structure after having been served with a stop-work order, except such work as he is directed to perform to remove a violation or unsafe conditions, shall be liable to the restraints provided in Section 19 of this regulation.

Section 21. Authority for Existing Buildings. (1) Upon the issuance of a final approval of a facility and the issuance of a lawful certificate of occupancy with respect to a particular facility, the building official's authority and responsibility as to that facility is ended so far as the KBC is concerned, unless the facility later becomes subjected to the KBC by virtue of Section 6 of this regulation.

(2) Other local or state law must be consulted to determine the existence of other powers given to the building official, such as those related to demolition or authority over unsafe structures, which are not specifically awarded him or her in the KBC.

(3) The State Fire Marshal's Office and the local fire official designated by the local government shall continue to be the persons responsible for enforcement of the standards of safety for existing buildings and shall also inspect for fire safety maintenance after a building has been given a final certificate by the building official, under KRS Chapter 227, and 815 KAR 10:015.

Section 22. Local Board of Appeals. (1) The mayor, chairman of the board of trustees, or county judge executive of a local government which is enforcing the Kentucky Building Code, may, upon approval of the local legislative body, appoint a local appeals board, consisting of at least three (3) technically qualified persons with professional experience related to the building industry, to hear appeals of the decisions of the local building official.

(2) Local governments which are enforcing the Kentucky Building Code may cooperate with each other and provide a local appeals board and shall adhere to the provision of KRS Chapter 65 when entering into such cooperative agreements.

(3) No local building official or employee of a local inspection department may sit on a local appeals board if such board is hearing an appeal to a decision rendered by his department. No member of a local appeals board shall hear an appeal in a case in which he has financial interest.

(4) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt.

(5) All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by registered mail no later than ten (10) days prior to the date of the hearing.

(6) The local appeals board shall render a decision within five (5) working days after the hearing. The board may uphold, amend or reverse the decision of a local building official, and there shall be no appeal from the decision of the local appeals board other than by appeal to the board.

Section 23. Appeals Procedures. (1) Where a local appeals board exists, a party including the local fire official must first appeal to the local board when aggrieved by a decision of the local building official.

(2) A party aggrieved by a decision of a local building official where no local appeals board exists may appeal directly to the board. The board shall further hear appeals directly from a party aggrieved by the decision of an agent of the department or the State Fire Marshal.

(3) Application for appeal may be made when it is claimed in writing that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction can be used, or that the building official has refused to grant a modification to the provisions of this code covering the manner of construction of materials to be used in the erection, alteration or repair of a building or structure.

(4) The board may appoint five (5) or more of its members, excluding the chairman of the board, to consider the recommendations of the commissioner or to conduct hearings, and those appointed shall act in all matters concerning the appeal for the entire board.

(5) The board may adopt such rules, regulations and bylaws as are necessary to conduct said appeals; and no member of the board or committee may vote on any matter which will result in his direct or indirect financial gain.

(6) Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Such appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation as stated in subsection (3) of why the decision of the state building official or local building official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

(7) The commissioner shall immediately notify the board when an appeal is received. The commissioner or a designated employee of the department shall then investigate the evidence pertaining to such an appeal, based upon the results of such investigation, make recommendations to the board or committee on the disposition of the case in question.

(8) No employee of the department shall investigate or make recommendation on an appeal to his own decision, but shall defer in such cases to employees who are not party to the decision which lead to the appeals.

(9) In conducting such investigation, the commissioner or the designated representatives, acting for the department shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause disposition to be taken, regulate the course of any hearings they may schedule, and hold conferences for the settlement or simplification of the issue by consent of the parties.

(10) The commissioner shall cause such investigation to be completed and forwarded with written recommendations to the board within thirty (30) days after receiving such an appeal.

Section 24. Action of the Board. (1) Upon receiving the written recommendations of the commissioner, the board may decide to accept such recommendations, or it may decide to convene a hearing to consider the question further. Upon receipt of the recommendations of the commissioner, the board shall render a decision on each appeal at its regularly scheduled meeting but no later than thirty (30) days after receipt of such recommendations.

(2) If the board has authorized an appeals committee to hear an appeal, the committee shall act for the board in all matters related to the appeal.

(3) Should the board's decision be to schedule a hearing on the appeal, such hearing shall occur within thirty (30) days of such decision, and all parties to such hearing shall be immediatley notified in writing of the time and place of such hearing by the commissioner. The board may further exercise the same powers of investigation as granted to the commissioner in Section 23 of this regulation. The board shall render a decision within ten (10) days of any appeals hearing it may conduct.

(4) The board may uphold, amend or reverse the decision of a local appeals board, a local building official or the state building official; and the decision of the board or the appeals committee shall be final.

(5) The chairman of the board shall notify the appropriate building official and he or she shall take immediate action in accordance with the decision of the board.

(6) There shall be no appeal from the board's decision except to the circuit court within whose jurisdiction the property in question is located. Application for review shall be made to the proper court within thirty (30) days following that decision.

Section 25. Construction Control and Responsibilities. (1) The provisions of this section shall define the responsibility of the building official in relation to design professionals and the circumstances under which the department or the local building official shall be authorized to accept design professionals affirmation in their plans and specifications as to compliance with various provisions of this code.

(2) All new, alteration, repair, expansion, addition or modification work involving the practice of professional architecture and engineering as defined by KRS Chapters 322 and 323 shall be prepared by registered professional architects or engineers as certified by the state; and all plans, computations and specifications required for a building permit application for such work must be prepared by or under the direct supervision of the registered architect or engineer and bear his seal and signature in accordance with those statutes.

Section 26. Validity. (1) In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions thereof, which may or shall be determined to be legal; and it shall be presumed that this code would have been passed without such illegal or invalid parts or provisions.

(2) Any invalid part of this code shall be segregated from the remainder of this code by the court holding such part invalid, and the remainder shall remain effective.

(3) The invalidity of any provision in any section of the KBC as applied to existing buildings and structures shall not be held to affect the validity of such section in its application to buildings and structures hereafter erected.

Section 27. Effective Dates for KBC Application. (1) Any building required by Section 9(1) of this regulation to be submitted to the Department of Housing, Buildings and Construction and which has not been submited and accepted for construction prior to February 15, 1980, must be constructed in compliance with the applicable provisions of the KBC.

(2) Any building required by Section 8 of this regulation to be submitted to a local government for plan review and which has not been lawfully
approved for construction prior to the following timetables shall be constructed in compliance with the applicable provisions of
the KBC:

(a) In all local governments in a county containing a first or second class city or urban county government, no later than February 15, 1980.

(b) In all local governments in a county where the largest city is of the third or fourth class, no later than August 15, 1981.

(c) In all local governments in a county containing no city larger than fifth or sixth class, no later than August 15, 1982.

(3) Any local government may adopt the KBC voluntarily before the mandatory date stated in subsection (2) of this section.

Section 28. Whenever the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections; using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety is maintained.

Section 29. Day Care Centers. Family child day care homes, group day care homes and child day care centers which comply with the provisions of the Life Safety Code, N.F.P.A. Phamplet #101, shall be deemed to have satisfied all the life safety requirements of the Kentucky Building Code.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: June 22, 1984
FILED WITH LRC: July 13, 1984 at 10:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 23, 1984 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, the 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 20, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? N/A

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems.

Section 1. The Kentucky Building Code shall include the National Electrical Code, 1981 Edition, N.F.P.A. #70, published by and copies available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. The National Electrical Code is hereby adopted by reference.

Section 2. The Kentucky Building Code shall include the "BOCA Basic Building Code/1981," Eighth Edition, published by and copies available from Building Officials and Code Administrators International, 17926 South Halsted Street, Homewood, Illinois 60430. That code, including all standards listed in Appendices A through F are hereby adopted by reference with the following additions, exceptions and deletions:

(1) Delete Article 1 in its entirety.

(2) Change subsection 201.0 to include the following additional definitions:

(a) "Construction: The erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein."

(b) "Equipment: Facilities or installations including but not limited to, heating, electrical, ventilating, air-conditioning, and refrigerating facilities or installations."

(c) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or a part thereof as it appeared at a specific period of time."

(d) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."

(e) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."

(f) "Stabilization: The process of applying measures designed to re-establish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."

(3) Change subsection 201.0 definitions to read as follows:

(a) "Basement: That portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, ventilating facilities, but which is not ordinarily used for purposes of general household habitation."

(b) "Story: That part of the building comprised between a floor and the floor or roof next above which is not a basement or an attic."

(4) Change subsection 308.5 to read as follows: "308.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the Appendix A Standard, One- and Two-Family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 22) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission. *Nevertheless, any builder may use exception #3 of Section 809.4 to determine minimum size of egress windows.*"

(5) Change subsection 504.1 to read as follows: "504.1 Limitations: These provisions shall not be deemed to prohibit alterations within the limitations of Section 6 of 815 KAR 7:010 provided an unlawful change of use is not involved."

(6) Delete Sections 515.1 through 515.11 and substitute the following: "515.1 Requirements for accessibility of the handicapped: Please see 815 KAR 40:010 for construction requirements providing accessibility to the handicapped in public buildings and public accommodations."

(7) Change subsection 516.1 to read as follows: "516.1 Approval: The provisions of this code relating to the reconstruction, restoration, stabilization, rehabilitation, and moving of buildings or structures shall not be mandatory for existing buildings or structures, identified and classified on the National Register of Historic Places or otherwise classified as historic by the Kentucky Heritage Commission or the department when such buildings or structures are judged by the department to be safe and in the public interest of health, safety and welfare. The department may require submission of architectural and engineering plans and specifications prior to a determination."

(8) Change subsection 603.2 to read as follows: "603.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."

(9) Change Section 613.1 to read as follows: "Private garages located beneath a one- and two-family dwelling

shall have walls, partitions, floors and ceilings separating the garage space from the dwelling constructed of not less than one (1) hour fireresistance rating. Private garages attached to a one- and two-family dwelling shall be completely separated from the dwelling and its attic area by means of one-half (1/2) inch gypsum board or equivalent applied to the garage side. In lieu of the required one and three quarter (1 3/4) inch solid core door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system or an approved automatic smoke detector located directly above the door in the garage shall be acceptable."

(10) Delete Section 705 and Section 804 in their entirety.

(11) Change Section 900.0 by creating a new subsection which shall read as follows: "900.2 Certificate of Compliance: the provisions of this article may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."

(12) Delete subsections 1404.4.2, 1404.4.3, 1404.4.4 in their entirety.

(13) Change subsection 1600.2 to read as follows: "1600.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(14) Add two new subsections to Section 1600.0 which shall read as follows:

(a) "1600.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1977 Edition of the ASME Boiler and Pressure Vessel Code, ANSI/ASME BPV-VIII-1."

(b) "1600.4 Mechanical Code: All mechanical equipment and systems not covered by 1600.2 or 1600.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix B, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1981 including all applicable standards listed within Appendices B through E."

(15) Delete Article Nineteen (19) in its entirety.

(16) Delete subsections 2000.1 through 2005.3 and substitute the following:

(a) "2000.1 Installations and Repairs. All electrical wiring and equipment shall be installed in conformity with the National Electrical Code incorporated by reference in the Kentucky Building Code."

(b) "2000.2 Electrical Inspections. Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:010".

(c) "2000.3 Certificate of Approval:"

1. After the Kentucky Building Code becomes effective pursuant to KRS 198B.110 and after a certified electrical inspector has been employed, contracted for or with, or otherwise provided for by the local government or the department, no utility shall initiate permanent electrical service to any new building until a final certificate of approval has been issued by a certified electrical inspector. Unless the department shall notify the utility in writing as to which buildings are subject to departmental approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government.

2. Nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.

(d) "Section 2000.4 Temporary use and Permission: The building official may in his discretion give temporary permission for a reasonable time to supply and use current in part of an electrical installation before such installation has been fully completed and the final certificate of approval has been issued; provided, that the part covered by the temporary certificate complies with all the requirements specified for lighting, heat or power in the National Electrical Code."

(17) Delete subsections 2200.1 through 2206.3.1 in their entirety and substitute the following: "2200.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

(18) Change subsection 809.4 to read as follows:

"809.4 Emergency escape: Every sleeping room below the fourth story in buildings of Use Group R shall have at least one (1) operable window or exterior door approved for emergency egress or rescue. The units must be operable from the inside to a full clear opening without the use of separate tools. Where windows are provided as a means of egress or rescue, they shall have a sill height not more than forty-four (44) inches (1118 mm) above the floor. All egress or rescue windows from sleeping rooms must have a minimum net clear opening of five and seven-tenths (5.7) square feet (0.53^2). The minimum net clear opening height dimension shall be twenty-four (24) inches (610 mm). The minimum net clear opening width dimension shall be twenty (20) inches (508 mm).

Bars, grilles or screens placed over emergency escape windows shall be releasable or removable from the inside without the use of a key, tool or excessive force."

EXCEPTIONS

1. Grade floor windows may have a minimum net clear opening of five (5) square feet (0.47^2).

2. In buildings of Use Group R-3, where the sleeping room is provided with a door to a corridor having access to two (2) remote exits in opposite directions, then an outside window or an exterior door for emergency escape from each such sleeping room is not required.

3. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 use groups) and one (1) and two (2) family dwellings, may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum height dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed ara must be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)

Section 3. Elevator Installation and Maintenance. The following subsections of Article 21 of the BOCA Basic Building Code are deleted or changed to read as follows:

(1) 2100.1 Scope: Except as may be otherwise provided by statute, the provisions of this article shall control the design, construction, installation, maintenance and operation of all elevators, escalators, moving stairways, moving walks, hereafter operated, installed, relocated or altered in all buildings and structures. The design, construction, installation, maintenance and operation of all miscellaneous hoisting and elevating equipment shall be subject to such special requirements as are deemed necessary by the

building official to secure their safe operation. The provisions of this article shall not apply to portable elevating devices used to handle materials only, and located and operated entirely within one (1) story. All such equipment shall be constructed, operated and maintained in compliance with accepted engineering practice. The construction, alteration, maintenance, operation, inspection and tests of manlifts shall be in conformity to the Safety Standard for Manlifts listed in ANSI A17.1.

(2) 2101.3 Identification of equipment: All elevators which are subject to periodic inspections shall be identified by a serial number stamped on the crosshead of the elevator car and on the front of the car door sill; and on devices other than elevators, on truss or frame, in figures not less than three-eighths (3/8) inch high. After such devices have been so designated, their numbers shall not be changed except by permission of the building official, and all correspondence in regard to such device shall refer to said number.

(3) 2102.3.2 Deleted.

(4) 2102.4.1 Periodic inspection intervals: Annual Inspection. Every passenger elevator and escalator shall be inspected once every twelve (12) months.

(5) 2107.4.2 Maintenance test intervals: Full load safety tests shall be made at intervals not exceeding the following:

(a) Power elevator car and counterweight safeties, governors and oil buffers, every five (5) years; and

(b) Hydraulic elevator shall have pressure relief test at no less than every twelve (12) months.

(6) 2102.5.2 Deleted.

(7) 2102.5.3 Manlifts: All equipment and machinery of manlifts shall be inspected and tested to insure reasonable safety of operation and shall include tests of the brake, terminal stopping device, cables and emergency stopping device. Acceptance tests shall also include a load capacity test as provided in the accepted standard listed in ANSI A17.1.

(8) 2102.5.4 Deleted.

(9) 2107.2.1 Buildings with elevator service: In all buildings and structures serviced by an elevator, all elevators shall be provided with a minimum clear distance between walls, or between wall and door excluding return panels, not less than sixty-eight (68) inches by fifty-four (54) inches (1727 mm by 1372 mm), and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm). The minimum clear width of the door shall be thirty-two (32) inches (813 mm).

(10) 2107.2.2 Elevators for fire department use: In all structures where elevator service is required for fire department use (see Section 629.8), all elevators shall be provided with a minimum distance between walls, or between wall and door excluding return panels, not less than eighty (80) inches by fifty-four (54) inches (2032 mm by 1372 mm) and a minimum distance from wall to return panel not less than fifty-one (51) inches (1295 mm), with a forty-two (42) inch (1067 mm) side slide door to allow for turning a wheelchair or accommodating an ambulance stretcher in its horizontal position.

(11) 2107.4 Use by handicapped persons: If interior access in multi-story buildings is provided by elevator(s), all passenger elevators shall meet the following requirements of Sections 2107.4.1 through 2107.4.11.

(a) 2107.4.4 Car call: The minimum acceptable time for doors to remain open shall not be less than five (5) seconds.

(b) 2107.4.6 Car controls: Elevator control panels shall have the following features:

1. Buttons. All control buttons shall be at least three-fourths (3/4) inch (nineteen (19) mm) in their smallest dimensions. They may be raised, flush, or recessed.

2. Tactile and visual control indicators. All control buttons shall be designated by raised or indented standard alphabet characters for letters, arabic characters for numerals, or standard symbols, and as required in ANSI A17.1-1978 and A17.1a-1979. Raised and indented characters and the main entry floor shall be designated by a raised or indented star at the left of the floor designation. All raised or indented designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised or indented control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

3. Height. All floor buttons shall be no higher than fifty-four (54) inches (1370 mm) above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than thirty-five (35) inches (890 mm) above the floor.

4. Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors.

(c) 2107.4.7 Hall buttons: The centerline of the hall call buttons shall be a nominal forty-two (42) inches above the floor. Director buttons, exclusive of border, shall be a minimum of three-fourths (3/4) inch (nineteen (19) mm) in size and raised, flush or recessed. Visual indication shall be provided to show each call registered, and extinguished when the call is answered. Depth of flush or recessed buttons when operated shall not exceed 3.8 inch (ten (10) mm). Button shall not be obstructed by chairs, ashtrays, or decorative ornaments, etc.

(d) 2107.4.10 Car position indicators: In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numeral shall illuminate. Numerals shall be a minimum of one-half (1/2) inch (thirteen (13) mm) high.

(e) 2107.4.11 Emergency communications: Emergency two (2) way communication systems between the elevator and a point outside the hoistway, shall comply with ANSI A17.1-1980. The highest operable part of a two (2) way communication system shall be a maximum of fifty-four (54) inches (1370 mm) from the floor of the car. It shall be identified by raised or recessed symbol and lettering complying with Section 30, and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset, shall be at least twenty-nine (29) inches (735 mm).

(12) 2108.4 Vents shall be located:

(a) In the side of the hoistway enclosure directly below the floor or floors at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air; or

(b) In the wall or roof of the penthouse or overhead machinery space above the roof, provided that openings have a total of not less than the minimum specified in Section 2108.5 in lieu of the required vents.

(13) 2114.1 Restricted use: Special purpose personnel elevators shall be restricted to employees only. They shall comply with the applicable requirements of this Article and

shall be installed only when permitted by the building official in feed, flour and cereal mills, grain elevators and in similar buildings of other use groups.

(14) 2114.2 Hoistways and hoistway enclosures: Where the hoistway is adjacent to areas permitting passage of people (e.g., passageways, stairwells, elevator landings), it shall be enclosed to a height of not less than seven (7) feet above the floor or stair treads. The enclosure shall be of sufficient strength to prevent contact between the enclosure material and the car or counterweight when the enclosure is subjected to a force of 250 pounds applied at right angles at any point over an area of four (4) inches by four (4) inches. Openwork enclosures may be used and shall reject a ball one (1) inch in diameter.

(15) 2114.2.1 Enclosure required: Except at the entrance, cars shall be fully enclosed with metal at sides and top. The enclosure at the sides shall be solid or of openwork which will reject a ball of one (1) inch in diameter. The minimum clear height inside the car shall be seventy-eight (78) inches.

(16) 2114.3 Limitation of load, speed and platform area: The rated load shall not exceed 650 pounds. The inside net platform area shall not exceed nine (9) square feet. The minimum rated load shall not be less than that based on seventy (70) pounds per square foot of inside net platform area or 250 pounds, whichever is greater. The rated speed shall not exceed 100 feet per minute.

(17) 2114.4 Emergency signal and/or communication: Each elevator shall be equipped with an alarm button or switch in the car operating station and an alarm device mounted in a location which shall be readily available to a person who is normally situated in the vicinity when the elevator is in use, or a means of voice communication to a receiving station always attended when the installation is in use. If the alarm device or means of voice communication is normally activated by utility power supply, it shall be backed up by a manual or battery operated device.

(18) 2114.5 through 2117.5 Deleted.

Section 4. Elevators. Appendix A and B, of the BOCA Basic Building Code under "Elevators, Escalators and Moving Walks," shall be changed to read as follows:

(1) Change the standard citation for "Practice for the Inspection of" by changing to read "ANSI A17.2-1982."

(2) Change all citations relating to the "Safety Code for" and substitute "ANSI 17.1-198*1 and Supplement to Safety Code for Elevators and Escalators ANSI/ASME A17.1b-1093* [0]."

Section 5. A new subsection of Article 3 of the Kentucky Building Code is hereby added to read as follows: "309.5 Tobacco auction warehouses: Warehouses, construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse will be used solely for the sale of tobacco on a seasonal basis or for the storage of non-combustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1707.0 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building."

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: June 22, 1984

FILED WITH LRC: July 13, 1984 at 10:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 23, 1984 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, the 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by August 20, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210

PURSUANT TO: KRS 210.010

NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources to prescribe regulations for the institutions under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the *July 1* [May 1], 1984, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the May 1, 1984, edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the May 1, 1984, edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the *July 1* [May 1], 1984, edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the *July 1* [May 1], 1984, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in the *July 1* [May 1], 1984, edition of the "Western State Hospital Policy Manual" consisting of thirty-one (31) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the May 1, 1984, edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the May 1, 1984, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the May 1, 1984, edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric Center Policy Manual. The policies and procedures set forth in the *July 1* [May 1], 1984, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild, R.N., Director, Division for Institutional Care

(1) Type and number of entities affected: No assistance program recipients.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Present procedure not previously adopted by regulation

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(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 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, 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 resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable

with regard to computation of allowable resources:

(1) The upper limit for resources is $1,500 for family size of one (1), $3,000 for family size of two (2), and fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, non-homestead real property, business or non-business, essential for self-support, is excluded from consideration.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of pre-paid burial, trust fund or life insurance policies, are excluded from consideration. The face value of life insurance is considered when determining the total value of burial reserves *if the face value of the life insurance is less than $1,500.* Burial spaces are excluded from consideration when computing the value of burial reserves.

(6) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(7) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

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, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

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 this regulation, 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	$*2,300* [2,200]	$*192* [183]
2	*2,700* [2,600]	*225* [217]
3	*3,200* [3,100]	*267* [258]
4	*3,900* [3,800]	*325* [317]
5	*4,600* [4,400]	*383* [367]
6	*5,200* [5,000]	*433* [417]

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale.

Section 4. Additional Income Considerations. In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(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 (75) dollars 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 (40) dollars 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) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). 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) of this section.

(2) Income protected for basic maintenance is twenty-five (25) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of twenty-five (25) dollars is applied to the cost of care except as follows:

(a) Available income in excess of twenty-five (25) dollars 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 of this regulation.

(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.

(4) When an individual loses eligibility for a supplemen-

tary 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 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred 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.

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 of this regulation. 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. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation and the six (6) months following that month.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and the next six (6) months thereafter; however, if ineligibility results, 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/*she* were a single individual due to living apart from his/*her* spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his/*her* spouse, one-half (1/2) 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) living with his/*her* 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 parents' 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/*her* income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five (25) dollars maintenance standard is not applicable since his/*her* 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.

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 parent (but not the other members of* the assistance group*)* subject to the following exclusions/disregards:

(1) The first seventy-five (75) dollars of the gross earned income of the stepparent who is employed full time or the first forty (40) dollars 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) of this regulation).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation 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*/herself* on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(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 considered available in the month of receipt or the first administratively feasible month thereafter.

Section 14. Full-Month Ineligibility Due to First-Day of Month Excess Resources. When an individual or family group related to the SSI assistance categories (i.e., aged, blind, or disabled) has excess resources on the first day of the month, the individual or group is ineligible throughout the month. The case shall be discontinued effective with the first administratively feasible month.

Section 15. 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 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 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.

(5) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss.

(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.

Section 16. Special Provisions for AIS/MR Recipients.

Effective April 1, 1983, medical assistance eligibilty for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) The income and resources of the parent(s) and/or spouse shall not be considered available to the AIS/MR participant.

(2) Income protected for basic maintenance of the AIS/MR participant shall be the standard for the federal supplemental security income program.

(3) The attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all particpants divided by twelve (12) and rounded to the nearest dollar.

(4) Determinations of eligibility for medical assistance of the AIS/MR participant's parent(s), spouse, and/or dependent children shall be made on the same basis as if the participant was institutionalized.

Section 17. Implementation. The provisions of this regulation, as amended, will be effective on *July 1,* [February 1,] 1984, applicable at the time of the next *determination of eligibility* [reinvestigation] for each *applicant or* recipient.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary

APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 10,000 to 12,000 current or potential recipients of Medicaid

(a) Direct and indirect costs or savings to those affected: NONE

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: NONE

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Estimated $300,000-$400,000 (Costs)
2. Continuing costs or savings: Same as first year
3. Additional factors increasing or decreasing costs: NONE

(b) Reporting and paperwork requirements: NONE

(3) Assessment of anticipated effect on state and local revenues: NONE

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:036. Amounts payable for skilled nursing and intermediate care facility 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 skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR *447.280* [447.272]. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Payment System, revised *July 1* [April 1], 1984, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed

minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of *May 16* [April 30] of each year and trending the facility costs to July 1 of the rate year. (Unaudited, *partial year*, and/or budgeted cost data may be used if a full year's audited data is unavailable. *Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.*) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 105 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 105 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 105 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. *A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.*

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess *twenty (20)* [five (5)] percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons

and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for *capital* [property] costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Division for Medical Assistance shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a wiaver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of [training,] conventions, meetings, assemblies, conferences, [seminars,] or any related activities), and legal fees for unsuccessful lawsuits against the cabinet. *However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.*

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the cabinet) as the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the cabinet will determine the

necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(16) The cabinet may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence). [The cabinet may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.]

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$26.99 & below**	—	—
27.00 - 27.99	*$1.38*	*$.87*
28.00 - 28.99	*$1.29*	*$.75*
29.00 - 29.99	*$1.18*	*$.62*
30.00 - 30.99	*$1.06*	*$.47*
31.00 - 31.99	*$ .92*	*$.31*
32.00 - 32.99	*$ .76*	*$.13*
33.00 - 35.05	*$ .53*	—

Maximum Payment $35.05

[(Effective 7-1-83)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$25.99 & below*	—	—
26.00 - 26.99	$1.38	$.87
27.00 - 27.99	$1.29	$.75
28.00 - 28.99	$1.18	$.62
29.00 - 29.99	$1.06	$.47
30.00 - 30.99	$ .92	$.31
31.00 - 31.99	$ .76	$.13
32.00 - 33.17	$ .53	—]

[Maximum Payment $33.17]

*For a basic per diem of *$26.99* [$25.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$56.99 & below**	—	—
57.00 - 62.99	*$1.38*	*$.87*
63.00 - 68.99	*$1.29*	*$.75*
69.00 - 74.99	*$1.18*	*$.62*
75.00 - 80.99	*$1.06*	*$.47*
81.00 - 86.99	*$ .92*	*$.31*
87.00 - 92.99	*$ .76*	*$.13*
93.00 - 98.99	*$ .53*	—

[(Effective 7-1-82)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below*	—	—
32.00 - 33.99	$1.38	$.87
34.00 - 35.99	$1.29	$.75
36.00 - 37.99	$1.18	$.62
38.00 - 39.99	$1.06	$.47
40.00 - 41.99	$ .92	$.31
42.00 - 43.99	$ .76	$.13
44.00 - 45.99	$ .53	—]

*For a basic per diem of *$56.99* [$31.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-84)

Basic Per Diem Cost	*Investment Factor Per Diem Amount*	*Incentive Factor Per Diem Amount*
*$36.99 & below**	—	—
37.00 - 38.99	*$1.38*	*$.87*
39.00 - 40.99	*$1.29*	*$.75*
41.00 - 42.99	*$1.18*	*$.62*
43.00 - 44.99	*$1.06*	*$.47*
45.00 - 46.99	*$ .92*	*$.31*
47.00 - 48.99	*$ .76*	*$.13*
49.00 - 52.39	*$ .53*	—

*Maximum Payment $52.39***

[(Effective 7-1-83)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$34.99 & below*	—	—
35.00 - 36.99	$1.38	$.87
37.00 - 38.99	$1.29	$.75
39.00 - 40.99	$1.18	$.62
41.00 - 42.99	$1.06	$.47
43.00 - 44.99	$ .92	$.31
45.00 - 46.99	$ .76	$.13
47.00 - 49.35	$ .53	—]

[Maximum Payment $49.35**]

*For a basic per diem of *$36.99* [$34.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

**The maximum payment for hospital based skilled nursing facilities is set at *$84.14* [$79.47].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 105 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 105 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 105 percent of the median is a lower dollar amount than has been currently set.

Section 5. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Medical Assistance, a re-evaluation of the point at issue. This request must be received within *forty-five (45)* [twenty (20)] days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review *or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.*

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division of Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Division of Management and Development, Department for Social Insurance. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within *thirty (30)* [twenty (20)] days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits

established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: July 5, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 87 SNFs; 188 ICFs; 9 ICF-MRs

(a) Direct and indirect costs or savings to those affected: NONE

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: NONE

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $250,000 (Costs)
2. Continuing costs or savings: $250,000 (Costs)
3. Additional factors increasing or decreasing costs: NONE

(b) Reporting and paperwork requirements: NONE

(3) Assessment of anticipated effect on state and local revenues: NONE

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable for Mediaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:045. Payments for mental health 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 mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR *447.325* [447.321], the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs *(utilizing the latest audited annual cost report or unaudited report if an audited report is not available)* not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year *and indexed for the rate year, so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)*

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement," (revised July 1, *1984* [1983]) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state (for purposes of [training,] conventions, meetings, assemblies, conferences, [seminars,] or any related activities), and legal fees for unsuccessful lawsuits against the cabinet. *However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.*

(4) The prospective rate shall not exceed *110* [105] percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

[(6) Rates for the first year (July 1, 1983 - June 30, 1984) shall be determined using an unaudited nine (9) month cost report for the period July 1, 1982 - March 31, 1983 trended to the beginning of the rate year.]

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: 14 mental health centers
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $1,000,000 - $1,200,000 (Costs)
2. Continuing costs or savings: Same as first year
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:055. Payments for primary care 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 primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325 , the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet , on the following basis:
(1) Payment shall be made on the basis of reasonable allowable cost.
(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, *1984* [1983], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.
(3) Allowable costs shall not exceed customary charges which are reasonable.
(4) Reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed *for the year beginning each* [in] July [each year], and shall be based on a projection of the change in the medical component of the Consumer Price Index *over the previous year* [(for the rate year as compared to the previous year)] as applied to the [weighted] median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.
(5) During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.
(6) The amount of any allowable incentive payment determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.
(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.
(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.
(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.
(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition Against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or sub-units of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 15 primary care facilities

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: Minimal (estimated $5,000-$10,000 in savings)

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 1:250. Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 194.030(6), 205.520
PURSUANT TO: KRS 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 incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medical Assistance Program and is applicable for both the categorically and medically needy.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Medical Assistance Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Material. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal Medicaid regulations at 42 CFR Parts 430-456, and interim final regulations at 42 CFR Parts 430-456, effective May 16, 1984;

(2) Federal "State Medicaid Manual," effective *July 1* [May 16], 1984;

(3) Federal action transmittals issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, [79-69,] 79-72, [79-76,] 79-98, [79-111,] 80-9, [80-16, 80-18, 80-23, 80-24, 80-32,] 80-59, [80-70, 80-78, 80-94, 81-8, 81-15, 81-21,] 81-23, 81-33, 81-35, [81-36, 81-40,] 82-1, 82-2, [82-8, 82-9,] 82-20, [82-23,] 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, and 84-5, effective *July 1* [May 16], 1984;

(4) Federal transmittal notices issued by the Health Care Financing Administration as follows: DQC-1-82, 10-82; DPO-76-81, 77-81, 78-81; MCD-46-81, 48-81, 55-81, 61-81, 62-81, 64-81, 67-81, 82-81, 86-81, 87-81, 89-81, 92-81, 1-82, 2-82, 6-82, 7-82, 10-82, 14-82, 16-82, 17-82, 18-82, 19-82, 25-82, 26-82, 28-82, 30-82, 33-82, 34-82, 35-82, 38-82, 41-82, 42-82, 50-82, 52-82, 2-83, 5-83, 9-83, 11-83, 12-83, 13-83, 14-83, 15-83, 19-83, 20-83, 26-83, 28-83, 29-83, 30-83, 35-83, 39-83, 40-83, 42-83, 1-84, 6-84, 7-84, 8-84, 9-84, 11-84, 13-84, 14-84, 15-84, 16-84, [and] 20-84, *23-84, 24-84, 25-84 and 26-84,* effective *July 1* [May 16], 1984;

(5) Medicare and Medicaid Guide, Volumes I, II, III, and IV, as published by the Commerce Clearing House, Inc., with the following related new developments transfer binders: 1981-1, 1981-2, 1982, 1983-1, 1983-2, and 1984-1, effective *July 1* [May 16], 1984; and

(6) State Medicaid Program policies and procedures manuals issued by the cabinet, as follows:

(a) Home and Community Based Services Waiver Project Adult Day Health Care Services, effective May 16, 1984;

(b) Alternative Intermediate Services/Mental Retardation Project, effective May 16, 1984;

(c) Birthing Center Services, effective May 16, 1984;

(d) Community Mental Health Benefits, effective May 16, 1984;

(e) Dental Benefits, effective May 16, 1984;

(f) Early and Periodic Screening, Diagnosis and Treatment Benefits, effective May 16, 1984;

(g) Family Planning Benefits, effective May 16, 1984;

(h) Hearing Services Benefits, effective May 16, 1984;

(i) Home and Community Based Services Waiver Project, effective May 16, 1984;

(j) Home Health Benefits, effective May 16, 1984;

(k) Hospital Services Benefits, effective May 16, 1984;

(l) Independent Laboratory Services Benefits, effective May 16, 1984;

(m) Intermediate Care Facility Benefits, effective May 16, 1984;

(n) Mental Hospital Services Benefits, effective May 16, 1984;

(o) Nurse Anesthetist Services, effective May 16, 1984;

(p) Nurse Midwife, effective May 16, 1984;

(q) Pharmacy Benefits, effective *July 1* [May 16], 1984;

(r) Physician Benefits, effective May 16, 1984;

(s) Primary Care Benefits, effective May 16, 1984;
(t) Rural Health Clinic Benefits, effective May 16, 1984;
(u) Skilled Nursing Facility Benefits, effective May 16, 1984;
(v) Ambulance Transportation Benefits, effective May 16, 1984, *as revised*; and
(w) Vision Services Benefits, effective May 16, 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid recipients
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: NONE
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: NONE*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: NONE
(3) Assessment of anticipated effect on state and local revenues: NONE
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: NONE
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *This regulation incorporates implementing material; any cost impact is shown in regulations covering the particular subject matter.

Tiering:
Was tiering applied? NO. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245
PURSUANT TO: KRS [13.082,] 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.
(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.
(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:011 and 904 KAR 1:004 (except as otherwise specified herein) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining

countable resources and the effect of resources on eligibility, the following policies are applied.

(1) The upper limit for resources is $1,500 for an individual and $2,250 for a couple.

(2) Income producing property with a net equity of $6,000 or less is excluded.

(3) The first $4,500 of equity value in an automobile is excluded; if used for employment, to obtain medical services, or if specially equipped (e.g., as for use by the handicapped) there is no upper limit on value.

(4) Burial reserves (life insurance, prepaid burial policy, etc.) up to $1,500 are excluded. The face value of life insurance is considered when determining the total value of burial reserves *if the face value of the life insurance is less than $1,500. Burial spaces are excluded from consideration when computing the value of burial reserves.*

(5) A homestead, household items, and personal items are excluded.

(6) Resources determined in accordance with subsections (2), (3), and (4) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than $466, effective 7/1/83; not less than $476, effective 1/1/84;

(b) Family care home: not less than $379, effective 7/1/83; not less than $389, effective 1/1/84;

(c) Caretaker:

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $333, effective 7/1/83; not less than $343, effective 1/1/84;

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $480, effective 7/1/83; not less than $496, effective 1/1/84;

3. Married couple, both eligible and both requiring care: not less than $518, effective 7/1/83; not less than $534, effective 1/1/84;

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

Section 6. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 7. Residency. (1) 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 applicants for or recipients of a state supplementary payment and institutionalized individuals. *The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as otherwise specified herein.*

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His/*her* I.Q. is forty-nine (49) or less or he/*she* has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He/*she* is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he/*she* is incapable of indicating intent.

(4) An individual is institutionalized if he/*she* is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his/*her* state of residence is Kentucky if he/*she* is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his/*her* state of residence is Kentucky if he/*she* is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his/*her* legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he/*she* was living in Kentucky when he/*she* became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he/*she* was living in another state when he/*she* was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he/*she* continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through *July 4, 1984* [June 23, 1983], even if he/*she* does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his/*her* receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he/*she* returns to this state and he/*she* has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he/*she* leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

Section 8. Implementation. The provisions of this regulation, as amended, will be effective on *August 1,* [February 1,] 1984, applicable at the time of the next reinvestigation for each recipient, except as otherwise specified.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: June 29, 1984

FILED WITH LRC: July 5, 1984 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Steet, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 5-15 recipients of state supplemental payments

(a) Direct and indirect costs or savings to those affected: NONE

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: NONE

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $5,000 (savings)

2. Continuing costs or savings: up to $15,000 (savings)

3. Additional factors increasing or decreasing costs: It will take up to one year to completely phase out individuals grandfathered into the supplemental payments program.

(b) Reporting and paperwork requirements: NONE

(3) Assessment of anticipated effect on state and local revenues: NONE

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: The grandfather period is being ended to comply with federal requirements.

Tiering:

Was tiering applied? No. No applicable for the state supplemental payments program.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:055. Hearings and appeals.

RELATES TO: KRS 205.231
PURSUANT TO: KRS [13.082,] 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under 42 CFR section 431.220, 45 CFR section 205.10, and KRS 205.231 to provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This regulation sets forth the methods by which the hearing requirement is fulfilled.

Section 1. Informing the Applicant or Recipient of His/Her Rights. Each applicant or recipient shall be informed orally and in writing at the time of application and in writing at the time of any action affecting his/her claim of his/her right to a hearing, the method by which he/she may obtain a hearing and that he/she may be represented by an authorized representative, such as legal counsel, relative, friend or other spokesperson, or he/she may represent himself/herself.

Section 2. Request for a Hearing. Any applicant or recipient or an authorized representative acting on his/her behalf, may request a hearing by filing with either the local office or central office of the Department for Social Insurance a written or oral (later reduced to writing) statement clearly indicating a desire for a hearing.

Section 3. Time Limitation for Request. To be considered timely, a written or oral request must be received by the department within *thirty (30)* [forty (40)] days of the date of the advance notice of adverse action or notice of decrease or discontinuance as it affects recipients, or within thirty (30) days of the notice of denial of an application [except that]. An additional thirty (30) days *for requesting a hearing* may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(1) The applicant/recipient was away from home during the entire filing period; or

(2) The applicant/recipient is unable to read or to comprehend the notice of adverse action or notice of decrease or discontinuance and right to request a hearing; or

(3) The applicant/recipient moved resulting in delay in receiving or failure to receive notice of adverse action or notice of decrease or discontinuance; or

(4) Serious illness of the applicant/recipient; or

(5) The delay was no fault of the applicant/recipient.

Section 4. Continuation of Assistance. If the request results from dissatisfaction regarding a proposed discontinuance, suspension or decrease and is received within ten (10) days of the date on the advance notice of adverse action or notice of decrease or discontinuance, assistance shall be continued *(unless the client requests the discontinuance, suspension or decrease be in effect pending the hearing decision)* through the month in which the hearing officer's decision is rendered. If the request is received within twenty (20) days of the date on the advance notice of adverse action or notice of decrease or discontinuance and it is established that the reason for delay meets the good cause criteria as contained in Section 3, assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered *(except that this requirement shall not be construed to require a continuation of benefits when the program benefit has been discontinued as a result of a change in law, regulations, or policy of the cabinet).* Continued or reinstated benefits are considered overpayments if the agency decision is upheld.

Section 5. All Hearing Requests Shall Be Acknowledged by the Hearing Branch. The acknowledgment letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation, and a statement to the effect that the local office can provide information regarding the availability of free representation by legal aid or welfare rights organizations within the community. Subsequent notification shall include the time and place the hearing will be held. Hearings shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from date of request to date of decision.

Section 6. Withdrawal or Abandonment of Request. The applicant or recipient may withdraw his/her request for a hearing at any time prior to release of the hearing officer's decision, provided, however, he/she is granted the opportunity to discuss withdrawal with his/her legal counsel or representative, if any, prior to finalizing the action. A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification, to report for the hearing, except that no hearing request shall be considered as abandoned without extending to the applicant or recipient, and, if applicable, his/her legal counsel or representative, the opportunity to establish that such failure was for good cause.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. All applicants/recipients are informed of their right to legal counsel or other representation, of the right to case record review relating to the issue and of the right to submit additional information in support of the claim. When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary. If a medical assessment at cabinet expense is requested by the applicant/recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Corrective Action. If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken, is incorrect, he/she shall authorize corrective action in the form of assistance to which the applicant or recipient would have been entitled but for the incorrect decision or, for proposed action, authorize continuing assistance. The applicant/recipient shall be then given the opportunity to withdraw the hearing request, but notwithstanding the corrective action, the hearing shall be scheduled if the applicant/recipient wishes to pursue the request.

Section 9. Conduct of a Hearing. (1) The hearing shall be conducted by a hearing officer whose impartiality is assured in that he/she shall not have been involved in the initial determination on the issue, or, to the extent possible, in previous hearings in behalf of the applicant/recipient. In addition a hearing officer may disqualify himself/herself due to personal knowledge of circumstances of the applicant/recipient. The applicant/recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria is not met.

The hearing shall be conducted where the applicant/recipient may attend without undue inconvenience.

(2) The applicant/recipient, his/her representative and any other party to the hearing may present such evidence as shall be pertinent to the issue on which the adverse action was, or is proposed to be, taken, advance any arguments without undue interference.

(3) The hearing officer shall, if necessary to secure full information on the issue, examine each party who appears and his/her witnesses. The hearing officer may take any additional evidence which he/she deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(4) The parties to the hearing, with the consent of the hearing officer, may stipulate the facts involved, in writing. The hearing may be decided on the basis of such stipulation or the hearing officer may schedule a hearing and take such additional evidence as is deemed necessary.

(5) All hearings shall be conducted informally and in such a manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon.

(6) Subpoenas may be issued by the hearing officer to compel attendance of any witness or the production of records except that subpoenas requested by the applicant/recipient shall be issued only on a sworn statement of need thereof by the applicant/recipient.

(7) The hearing officer may in his/her discretion, direct or grant a continuance of a hearing in order to secure necessary evidence.

Section 10. The Decision. After the hearing is concluded, the hearing officer shall set forth in writing his/her finding of facts and issues, specifying the reasons for the decision and identifying the supporting evidence and regulations. A copy of the decision shall be mailed to the applicant/recipient and his/her representative. The decision, with respect to the issues considered, shall be final unless further appeal to the appeal board is initiated under KRS 205.231(4) within twenty (20) days from the date of mailing of the decision.

Section 11. Appeal from Decision of Hearing Officer. Any applicant/recipient or his/her authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3). To be timely, such request must be received in a local office or the central office of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed, except that a request received within thirty (30) days of the hearing officer's decision will be considered timely if the criteria in Section 3 is met. The request shall be filed in writing or orally, later reduced to writing, and shall be considered filed on the day it is received.

Section 12. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. All appeals shall be acknowledged in writing to the applicant/recipient and his/her authorized representative. The acknowledgment shall offer the opportunity to file briefs or submit new and additional proof and the tentative date on which the board will consider the appeal.

Section 13. Appeal Board Review. All appeals to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant/recipient specifically requests permission to file additional proof. When an appeal is being considered on the record, the parties may, if they desire, present written arguments and at the board's discretion be allowed to present oral arguments. In addition, the appeal board may direct the taking of additional evidence before it, if needed, in order to resolve the appeal. Such evidence shall be taken by the board after seven (7) days notice to the parties giving the parties the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 14. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the board, shall set forth in writing the facts on which the decision is based and shall be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process as provided in KRS 205.234

Section 15. Payments of Assistance. Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include the month of application or the month in which incorrect action of the cabinet adversely affected the applicant/recipient providing it is established that the applicant/recipient was eligible during the entire period in which assistance was withheld.

Section 16. Special Provisions Relating to Skilled Nursing and Intermediate Care Level of Care Determinations. The cabinet has contracted with the Kentucky Peer Review Organization (KPRO) to perform level of care determinations for individuals in skilled nursing and general intermediate care facilities. For those individuals appealing KPRO level of care determinations, the following special provisions are applicable:

(1) KPRO, pursuant to its contract with the cabinet, makes level of care determinations (i.e., a determination as to whether patient status criteria is met). If the level of care determination is adverse to the client, a written notice of the decision (and of the client's appeal rights) is provided to the client (patient), physician of record, the facility (if any), and the cabinet. The client then may begin the appeal process by requesting a reconsideration of the adverse decision. The request for reconsideration must be made within sixty (60) days of the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits will continue (as appropriate) until the reconsideration decision has been made. Reconsiderations will be made within ten (10) working days of the request when the client is in the facility; if the request for reconsideration is received after the client has left the facility, the reconsideration will be made within thirty (30) days.

(2) When the reconsideration decision is adverse to the client, he/she may then appeal to the cabinet in the usual manner. The appeal must be filed within twenty (20) days of the date the client is notified of the reconsideration decision, and may be filed with KPRO or directly with the department. If filed with KPRO, KPRO must forward the request with appropriate medical records and any other necessary documentation to the cabinet.

(3) When a negative decision has been appealed to the cabinet, the appeal will be processed in the usual manner as set forth in this regulation. This provision shall in no circumstances, however, be construed in such a manner as to require a continuation of benefits following a reconsideration, or so as to contravene the timeliness provisions contained in this section.

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet does, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (briefs included) of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his/her client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of such fee shall be a matter entirely between such counsel or agent and the applicant/recipient. Such fee shall not be deducted either in whole or in part, from the benefit checks otherwise due and payable to the applicant/recipient.

Section 18. Hearings and Appeals Relating to Decisions to Reclassify or Transfer Mentally Retarded Persons in State Institutions. In lieu of the hearing and appeal process specified above, hearings and appeals relating to decisions to reclassify or transfer mentally retarded persons in state institutions shall be in accordance with the requirement of KRS 210.270.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All applicants/recipients of Aid to Families with Dependent Children, Medicaid, and State Supplemental Payments

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable for welfare program regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:140. Supplementary policies for programs administered by the Department for Social Insurance.

RELATES TO: KRS 194.030(6), Chapter 205
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: KRS 194.010 designates the Cabinet for Human Resources as the primary state agency responsible for the development and operation of assistance programs, and KRS 194.050 empowers the secretary of the Cabinet for Human Resources to adopt, administer and enforce regulations sufficient to operate the programs and fulfill the responsibilities vested in the cabinet. This regulation states the general policy of the cabinet with regard to program materials incorporated into regulatory form by reference for use by the Department for Social Insurance, and incorporates by reference materials related to the programs of aid to families with dependent children, medical assistance, home energy assistance, refugee assistance, food stamps, child support enforcement, state supplemental payments for the aged, blind or disabled, disability determination, and collections which are essential for the implementation of those programs.

Section 1. General Policy Relating to Program Materials Incorporated by Reference. (1) Kentucky administrative regulations relating to program matters reflect the policy of the cabinet with regard to the issues addressed in the regulation.

(2) Materials incorporated by reference shall be construed and interpreted in such a manner as to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations.

Section 2. Incorporation by Reference. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Department for Social Insurance Manual of Operations, effective *July 1* [May 16], 1984;

(2) Department for Social Insurance Manual of Forms, effective *July 1* [May 16], 1984; and

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective May 16, 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in

the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All assistance program applicants/recipients; all Medicaid Program providers.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *This regulation incorporates implementing material; any cost impact is shown in regulations covering the particular subject matter.

Tiering:
Was tiering applied? No. Not applicable to assistance program regulations

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:150. Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program.

RELATES TO: KRS 194.030(6), 205.200, 205.220, 205.231
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer public assistance programs under Title IV-A of the Social Security Act, namely Aid to Families with Dependent Children, herein referred to as AFDC. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the AFDC program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Aid to Families with Dependent Children Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:
(1) Federal aid to families with dependent children regulations at 45 CFR Parts 200-299, and interim final regulations at 45 CFR Parts 200-299, effective May 16, 1984; and
(2) Federal aid to families with dependent children action transmittals, as follows: SSA-AT-77-44, 78-13, 78-14, 78-16, 78-21, 78-27, 78-28, 78-38, 79-2, 79-4, 79-5, 79-7, 79-11, 79-14, 79-18, 79-22, 79-26, 79-29, 79-31, 79-32, 79-33, 79-35, 79-42, 79-44, 80-2, 80-3, 80-9, 80-11, 80-19, 80-22, 80-24, 80-29, 80-30, 80-36, 80-38, 80-42, 80-44, 80-45, 80-50, 81-2, 81-7, 81-8, 81-10, 81-11, 81-12, 81-15, 81-16, 81-17, 81-18, 81-23, 81-29, 81-31, 81-33, 81-34, 81-35, 81-36, 81-37, 82-1, 82-5, 82-6, 82-9, 82-11, 82-13, 82-15, 82-16, 82-17, 82-18, 82-19, 82-20, 82-28, 82-33, 82-34, 83-6, 83-7, 83-10, 83-11, 83-13, 83-14, 83-17, 83-18, 83-21, 83-22, 83-23, 83-25, 83-27, 84-2, 84-3, 84-5, 84-6, [and] 84-7, *84-8, and 84-9,* effective *July 1* [May 16], 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Change in policy has possibility of affecting some or all of the AFDC caseload; however, it cannot be anticipated which ones.
(a) Direct and indirect costs or savings to those affected: Minimal
1. First year: Unknown
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Insignificant

(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings: Minimal
1. First year: Unknown
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Minimal
(3) Assessment of anticipated effect on state and local revenues: No significant impact
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Changes are required to be made uniformly, statewide.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:160. Disability determinations program.

RELATES TO: KRS 194.030(6), 205.200, 205.245, 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility, under KRS Chapter 205, to administer programs of public assistance in accordance with Titles IV-A and XIX of the Social Security Act, and KRS 205.245. The cabinet is also responsible, by agreement with the United States Department of Health and Human Services, for determinations of disability under the provisions of Titles II and XVI of the Social Security Act. This regulation incorporates into regulatory form, by reference, materials used in determinations of disability under Titles II, IV-A, XVI and XIX of the Social Security Act, and KRS 205.245. The program for making disability determinations shall be referred to herein as the disability determinations program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the disability determinations program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:
(1) Social Security Disability Rulings, effective May 16, 1984;
(2) Social Security Disability Program Operations Manual, Part 4, Chapters 7 and 9, effective May 16, 1984;
(3) Social Security Disability Program Operations Manual, Part 04, Chapters 001, 003, and 005, effective May 16, 1984;
(4) Social Security Disability Program Operations Manual, Part 04, Chapter 004, effective May 16, 1984;
(5) Social Security Disability Program Operations Manual, Part 04, Chapters 006, 007, 009, and 010, effective May 16, 1984; and
(6) Social Security Administration instructional messages, effective July 1, 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 175 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: No assistance program recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *While there is some impact on Social Security recipients, there is no measurable cost impact on programs administered by the cabinet.

Tiering:
Was tiering applied? No. Not applicable to Disability Determinations Program.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:170. Incorporation by reference of materials relating to the Child Support Program.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800 and 205.992. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Child Support Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Child Support Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal child support regulations at 45 CFR Parts 300-399, and interim final regulations at 45 CFR Parts 300-399, effective *July 1* [May 16], 1984;

(2) Federal Office of Child Support Enforcement Action Transmittals as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-13, 83-15, and 83-18, effective May 16, 1984;

(3) Department for Social Insurance Child Support Manual of Procedures, effective *July 1* [May 16], 1984;

(4) Department for Social Insurance Child Support System Handbook, effective May 16, 1984; and

(5) Department for Social Insurance Child Support Action Memorandums, as follows: DCSE-AM-82-07, 82-27, 82-36, 82-53, 83-16, 83-21, 83-29, 83-30, 83-31, 83-36, 83-38, 83-39, 83-48, 83-54, [84-09,] 84-10, 84-11, 84-16, 84-18, 84-19, [and] 84-20, *and 84-22,* effective *July 1* [May 16], 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 133,000 AFDC recipients receiving child support program services; about 25,000 non-AFDC individuals receiving child support services; about 6,000 absent parents.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minor revisions to reports and paperwork already incorporated.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no cost impact because this regulation incorporates procedural changes having minimal or no cost.

Tiering:
Was tiering applied? No. Not applicable for child support regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:200. Collections program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS Chapters 194 and 205 to operate public assistance programs, and is empowered by KRS 194.050 to promulgate regulations necessary for the administration of its programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Collections Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the collection program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed material is hereby incorporated by reference, effective on the date shown: Collections Branch Policy and Procedures Manual, effective *July 1* [May 16], 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 15,000 current or former recipients of AFDC, Medicaid, Food Stamps, and Child Support benefits; approximately 20-50 Medicaid providers.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Collections program implementing material (form letters) is revised; there is no cost impact.

Tiering:
Was tiering applied? No. Not applicable to Collections Program regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:090. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050

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 Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:
(1) Federal food stamp regulations at 7 CFR Parts *270* [251]-282, and interim final regulations at 7 CFR Parts 251, *270*-282, effective *July 1* [May 16], 1984;
(2) Department for Social Insurance Food Stamp Handbook, effective *July 1* [May 16], 1984; and
(3) Federal food stamp regional letters as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, [and] 84-36, *84-37, 84-38, and 84-39,* effective *July 1* [May 16], 1984.

Section 3. All documents incorporated by reference herein may be reviewed during regulation working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m.

in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: The entire food stamp caseload

(a) Direct and indirect costs or savings to those affected: No real costs or savings

1. First year: Unknown
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs (note any effects upon competition): None known

(b) Reporting and paperwork requirements: Minimal changes

(2) Effects on the promulgating administrative body: These revisions will keep the state's policy in compliance with federal requirements and enhance program administration practices.

(a) Direct and indirect costs or savings: Minimal

1. First year: Minimal
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: Not significant, although the changes will promote more accuracy and efficiency in program administration.

(3) Assessment of anticipated effect on state and local revenues: Insignificant impact.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal requirements did not allow for alternatives.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. Federal requirements mandate uniform statewide implementation.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

904 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990

PURSUANT TO: KRS 13A.100, 194.050(1), 341.115

NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:

(1) Unemployment Insurance Local Office Manual as issued February 1984 and last revised *June 21,* [May] 1984, *to include in Sections 2020 and 3060, respectively, procedures for completion of the initial payorder card and data change requests.* This manual includes proceedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting benefit rights interviews; for processing payorder cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-service-members, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.

(2) Unemployment Insurance Benefit Branch Procedures Manual issued May 1982 and last revised December 1983. This manual includes procedures for administereing the payment of unemployment insuranae benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-service-members, combined wage claimants, interestate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive program; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.

(3) Unemployment Insurance Tax Collection and Accounting Branch Manual issued November 1982 and last revised May 1984. This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wage and tax reports by making adjustments, assessing ad-

ditional payment and penalties and crediting tax overpayments; for maintaining records of employer accounts and tax payments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bakruptcy or against monies due to delinquent employers from state agencies.

(4) Unemployment Insuranace Administrative Support Branch Manual issued December 1983 and last revised March 1984. This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control; and for monitoring purchases, expenditures and repairs.

(5) Unemployment Insurance Field Audit Manual issued February 1984 and last revised May 1984. This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical asistance to employers.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 and in local unemployment insurance offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels
(1) Type and number of entities affected: Unemployment insurance benefit claimants; thousands per year
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendment does not change any process or procedure, hence no impact involved.

Tiering:
Was tiering applied? No. Procedure already in effect; all claimants are to be treated equally under the law.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Program Administration and Technical Services
(Proposed Amendment)

904 KAR 6:020. Weatherization assistance for low income persons.

RELATES TO: KRS 194.030(9)
PURSUANT TO: KRS 13A.100, 194.050(1)
NECESSITY AND FUNCTION: Chapter 42 USC 6861 authorizes the states to implement a weatherization program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the weatherization program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the weatherization program as authorized by 42 USC 6861 and as regulated in Title 10 CFR Part 440, the following CFR and operating manuals are adopted by reference:
(1) Title 10 CFR Part 440, dated January 23, 1984.
(2) 1983 Weatherization Manual issued September, 1983, and last revised *May 11,* [January,] 1984.
(3) Weatherization Assistance Program Specifications and Installations Standards Manual issued October, 1983 *and last revised May 25, 1984.*

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels
(1) Type and number of entities affected: Non-profit local administrative agencies; 22 community action agencies; one senior citizens center; one local government.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 903 KAR 2 - administrative regulations; U.S. Deparatment of Energy "Weatherization Assistance Program" pursuant to 42 U.S.C. 6861 et seq. and 10 CFR Part 440; CHR "Weatherization Assistance for Low-Income Persons" pursuant to the Omnibus Budget Reconciliation Act of 1981.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. Program has been in existence since 1977.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Field Services
(Proposed Amendment)

905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.030(8), 194.060, 199.011 to 199.375, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208 and 209
PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030
NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services--Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through *July 13* [June 11], 1984, as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. 905 KAR 1:080, Boarding home rates, is hereby repealed.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith
(1) Type and number of entities affected: All offices of DSS
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Reduced from present requirements
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reduced from present requirements
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All offices will operate by these policies.

Proposed Regulations

ENERGY CABINET
Department of Energy Production and Utilization
Division of Alternate Energy Development.

115 KAR 2:020. Income tax credit for active solar, passive solar, wind, and geothermal energy systems.

RELATES TO: KRS Chapter 141
PURSUANT TO: KRS 141.380(9), 152A.180
NECESSITY AND FUNCTION: The regulation has been developed by the Kentucky Energy Cabinet to assure uniformity in the administration of its duties to certify that energy systems installed are viable, and to maintain commonly accepted energy equipment standards which effectively conform to the statutory definition of qualifying energy property. The regulation sets forth administrative procedures, requirements and standards for determining whether property is used to generate power from solar radiation, wind, or geothermal energy as defined by KRS 141.375 so as to qualify for an income tax credit. The program will complement actions by the Kentucky Revenue Cabinet in allowing eligible taxpayers to claim tax credits on their income tax returns.

Section 1. Definition. (1) "Qualifying energy property" means property used to generate power from solar radiation, wind, or geothermal energy. This term includes the components of active solar systems, passive solar systems, wind energy systems and geothermal energy systems, as defined in subsections (2) through (5) of this section.

(2) "Active solar system" means a system of equipment capable of collecting and converting solar radiation into thermal, mechanical or electrical energy, and of transferring these forms of energy to storage or the point of use. It includes water heating, space heating or cooling, and the generation of electrical or mechanical energy. Transfer or storage components are included, except for those which would be required regardless of the energy source being used.

(3) "Passive solar system" means a direct thermal system which utilizes the structure of a building and its operable components to collect, store and distribute heating or cooling during the appropriate times of the year, by utilizing the climate resources available at the site. It includes those portions or components of a building that are expressly designed and required for the collection, storage and distribution of solar energy. Structural components of a building which also are used as part of the energy system, such as supporting walls used also for heat storage, are included only if and to the extent that their cost exceeds that of conventional construction. Multi-purpose components shall include but not be limited to windows or attached greenhouses, if designed as part of a solar system and if south facing. Multi-purpose components shall be included for half of their cost.

(4) "Wind energy system" means a system of equipment capable of intercepting and converting wind energy into mechanical or electrical energy and of transferring these forms of energy to the point of use or storage. It does not include those storage or transfer components which would be required regardless of the energy source being used. Wind equipment used to produce power for transportation is excluded.

(5) "Geothermal energy system" means a system of equipment necessary to transmit or use natural heat from the earth to provide hot water, produce electricity or generate heating or cooling for use within a building. This includes hydrothermal energy systems. It does not include those storage or transfer components which would be required regardless of the energy source being used.

(6) "Photovoltaic" means a system of equipment which converts solar energy directly into electrical energy, and is capable of transferring this form of energy to the point of use or storage, or to the point of connection to the conventional electrical system.

(7) "Glazing" means transparent material which transmits not less than seventy-five (75) percent of the solar energy which is transmitted by standard float glass.

(8) "Heat sink" means a body or substance, such as earth or water, used for the disposal of heat in the course of a hydrodynamic or thermodynamic process.

(9) "Solarium" means a room having glazing exposed to the sun, such as an atrium, sunporch, greenhouse, or sunroom.

(10) "Air plenum" means a space created to facilitate the flow of air for heating or cooling purposes. Examples are double envelope construction and thermal chimneys.

Section 2. Active Solar Systems. Qualifying systems must be one (1) of the following types—heating and cooling systems or electrical generation systems.

(1) Heating and cooling systems.

(a) An active heating and cooling solar system consists of components which may be a separate part of the building. A system for heating and/or cooling must transport the thermal energy derived from the sun to storage, and/or to the point of use or connection to the conventional system. While the design, operation, and performance of active heating and cooling systems may vary, to qualify the system must include the following functions:

1. The means for collecting sunlight to create hot liquids or hot air. The glazing surface must face within thirty (30) degrees due south. The plane of the glazing surface must have an angle of tilt as measured in degrees from the horizontal plane equal to or greater than the degree latitude of the installation site.

2. The means for absorbing the sun's heat from the collecting surface to create hot liquids or hot air.

3. The means for circulating or transferring the hot liquids or hot air.

(b) Any components which are designed as part of the heating and cooling system and are reasonably necessary for its efficient and useful operation will qualify. Such components may include but are not limited to the following:

1. Storage mediums, such as tanks to store hot liquids or rock beds to store hot are;

2. Thermostats to activate fans and pumps that circulate the hot liquid or hot air; and

3. Heat exchangers which utilize hot liquids or hot air to transfer heat to liquid or air used for heating and/or cooling a building.

(2) Electrical generation systems.

(a) An electrical generation system must include a photovoltaic energy conversion system and collection and electrical transmission devices. The photovoltaic system to qualify must include the following components:

1. The photovoltaic cell array and any devices required to mount the cell array. The photovoltaic cell array must face within thirty (30) degrees due south. The plane of the photovoltaic cell array must have an angle of tilt as measured in degrees from the horizontal plane which is within fifteen (15) degrees of the degree latitude of the installation site.

2. Electrical transmission components extending from the photovoltaic cells to storage, and/or to the point of use, or connection to the conventional system.

(b) Any components which are designed as part of the photovoltaic system and are reasonably necessary for its efficient and useful operation will qualify. Such components may include but are not limited to the following:

1. An inverter which converts electricity from direct current (DC) to alternating (AC);

2. Safety equipment required by a utility company, if the photovoltaic system is feeding electricity into a utility system; and

3. Any device used to store the electrical energy, if storage is needed to delay the use of the energy produced.

Section 3. Passive Solar Systems. (1) To qualify as a passive solar system, the system must consist of south facing glazing, storage mass, and a method of isolating the storage mass from the outdoor climatic conditions. A passive solar system must utilize the materials which form the enclosure to collect, store, and distribute the solar energy, usually by non-mechanical means. Qualifying systems must be one (1) of the following types—direct passive solar systems, indirect passive solar systems, or attached solariums.

(a) To qualify as a direct passive solar system, the following conditions must be met:

1. The glazing must face within thirty (30) degrees of due south (except when the glazing is slanted, then the angle deviation from due south may be such that the equivalent solar radiation between nine (9) a.m. and three (3) p.m. (solar time) is at least equal to vertical glazing facing within thirty (30) degrees of due south);

2. Sufficient storage mass must exist to receive and store fifty (50) percent of the solar energy transmitted by the glazed surface; and

3. Movable insulation of at least R-5 value must be available to shield the glazing, or the solar collection surface must be double glazed.

(b) To qualify as an indirect passive solar system, the following conditions must be met:

1. The glazing must face within thirty (30) degrees of due south (except when the glazing is slanted, then the angle deviation from due south may be such that the equivalent solar radiation between nine (9) a.m. and three (3) p.m. (solar time) is at least equal to vertical glazing facing within thirty (30) degrees of due south);

2. Sufficient storage mass must exist to receive and store fifty (50) percent of the solar energy transmitted through the glazed surface.

(c) To qualify as an attached solarium, the following conditions must be met:

1. The glazing must face within thirty (30) degrees of due south (except when the glazing is slanted, then the angle deviation from due south may be such that the equivalent solar radiation between nine (9) a.m. and three (3) p.m. (solar time) is at least equal to vertical glazing facing within thirty (30) degrees of due south);

2. A mechanism must exist to transport the excess heat to the conditioned environment; and

3. The solarium must be thermally isolated from the conditioned space by an equivalent R-5 insulation, or R-5 movable insulation must be available to cover the glazed area, or the glazed area must be double glazed.

(2) Eligible components for passive solar systems. Any components which are designed as part of the passive solar systems as described in this section and are reasonably necessary for its efficient and useful operation will qualify. Such components may include but are not limited to the following:

(a) Glazing materials and other materials to seal the glazing, and the supporting structure.

(b) Storage mass may include:

1. Floors if built of masonry, slate, or other thermal materials, if insulated around the perimeter or underneath the floor.

2. Walls if built of masonry, water, or other thermal storage materials.

(c) Movable insulation if it has an equivalent of R-5 or greater insulating value and is sealed around the edges. Included are ropes, tracks, pulleys, motors, and other devices for the movement and/or storage of insulation, provided that the sole purpose of these items is to move and store the insulation.

(d) Devices for controlling heat loss or heat gain, or for distributing heat. Such devices may include awnings, overhangs, and attached lattice work, fans, and air plenum.

Section 4. Wind Energy Systems. (1) A qualifying wind energy system must be a non-mobile system and must extract energy from the movement of air caused by the uneven heating of the earth from the sun. The system of equipment must be capable of intercepting and converting wind energy into thermal mechanical or electrical energy, and of transferring these forms of energy to storage, or to the point of use, or connection to the conventional system. Wind energy systems must include the following components:

(a) A device which collects the energy from the wind, such as blades, rotors, and hubs;

(b) A mechanism which transmits the collected energy, such as gearbox, shaft, and bearings; and

(c) A mechanism which transforms the energy to mechanical, electrical or thermal energy, such as generators and pony breaks.

(2) Any components which are designed as part of the wind energy system and are reasonably necessary for its efficient operation will qualify. Such components may include but are not limited to the following:

(a) A tower or other supporting structure, if the purpose of the structure is solely to support and house the equipment in subsection (1) of this section. If an existing struc-

ture is used to mount the wind machine, then only the modifications necessary for the installation of the wind machine are eligible;

(b) A device used to store the energy, if storage is needed to delay the use of the energy produced; and

(c) Safety equipment required by a utility company, if the wind system is feeding electricity into a utility system.

Section 5. Geothermal Energy Systems. A geothermal energy system must use a thermal exchange with the earth to transmit or use natural heat from the earth to provide hot water, produce electricity, or generate heating and/or cooling for use within a building. The system of equipment must be capable of converting energy from the earth and transferring the energy to storage, or to the point of use, or connection to the conventional system. Qualifying systems include the following types:

(1) Ground water to air heat pumps, in which a heat pump uses ground or surface water as the source when space heating, and the heat sink when space cooling;

(2) Earth coil systems, in which pipes are buried in the ground, either vertically or horizontally, and a fluid is pumped through the pipes.

(3) A closed system, where a heat pump uses a stored water unit as the source and a heat sink; in such case, the storage unit must be in contact with the earth and below the frost line (twenty-four (24) to thirty (30) inches), and must be of sufficient size that it will not freeze solid during the heating season.

Section 6. Comparable Systems. The minimum requirements set forth in the regulation may be waived by the Kentucky Energy Cabinet if the applicant can clearly show that the overall performance and efficiency of his/her system of relevant components is equal to or greater than a system or relevant components which meet the minimum requirement stated in this regulation.

Section 7. Application Procedures. (1) Any taxpayer seeking certification of a qualifying energy property for purposes on an income tax credit under KRS 141.380 shall complete and file an application with the Kentucky Energy Cabinet. An application form will be provided by the Kentucky Energy Cabinet and the application shall include:

(a) Documentary proof of expenditures for the purchase and installation of the qualified energy property. Expenditures must be itemized for each component of the system. Labor expenditures must also be itemized.

(b) Documentary proof that the system is completely installed as of December 31 of the applicable tax year prior to application for benefits.

(c) Identification of supplier(s) and laborer(s).

(2) Upon receipt of a complete and properly documented application, the Kentucky Energy Cabinet shall evaluate it to determine whether the system and components are qualifying energy property.

(3) If the Kentucky Energy Cabinet determines that the energy property qualifies for the tax credit, the Kentucky Energy Cabinet shall issue a qualified energy property certificate to the applicant for the energy property components which qualify for a tax credit.

(4) If the Kentucky Energy Cabinet determines that no certificate will be issued, the Kentucky Energy Cabinet shall notify the applicant in writing of this decision.

(5) The Kentucky Energy Cabinet may take up to sixty (60) days to review and act on an application for certification of an energy property.

(6) An applicant may request reconsideration of the decision of the Kentucky Energy Cabinet by submitting a written request together with any additional documentation or support which can be offered.

(7) The Kentucky Energy Cabinet may make information available to the Kentucky Revenue Cabinet for its determination of the amount of credit to which the applicant is entitled.

GEORGE E. EVANS, JR., Secretary

APPROVED BY AGENCY: July 6, 1984

FILED WITH LRC: July 6, 1984 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 23, 1984 at 1 p.m. in the ground floor auditorium, Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing at least five days before the hearing date the following office: John M. Stapleton, Director, Division of Alternate Energy Development, Department of Energy Production and Utilization, Kentucky Energy Cabinet, P.O. Box 11888, Iron Works Pike, Lexington, Kentucky 40578-1916.

REGULATORY IMPACT ANALYSIS

The following items are in direct response to the informational requirements set forth in HB 334 (13A.240, Regulatory Impact Analysis-Items (1)(a)-(f).

(a) The income tax credit program will be available to ALL individuals, businesses and organizations installing an eligible energy property and filing an income tax return. It is anticipated that approximately 400 tax returns will be filed annually under the program.

(b) The projected average tax credit (or savings to be taxpayer) will be $525 per claimant. The total tax credit expected to be claimed during the first year is $210,000.

Only incidental costs for postage, and time in completing application forms and in keeping records of expenditures will be encountered by those making claims under the program. The taxpayers will continue to receive monetary benefits for many years. In addition to the initial tax savings, there will be lower costs for conventional energy resulting from the use of of alternate energy.

(c) It is estimated that the implementation cost of the program by the Kentucky Energy Cabinet, after implementation of the administrative regulation, will be approximately $16,000 (1/2 man year plus printing and postage). These costs are expected to continue for the second and third years. Increased efficiencies in handling and evaluating applications will offset greater numbers of claimants in the second and third years.

(d) Increased construction activities and the resulting greater value of local property will create more local tax revenues. The effect on state tax revenues is projected to be a slight net gain. The direct projected tax revenue losses are offset by projected increased economic activity.

(e) There were no other feasible alternatives to the Kentucky Energy Cabinet in meeting the requirements of the Act except the adoption of administration regulations. In-house policies and memorandas would not satisfy the requirement that administrative regulations are necessary when an administrative body must implement, interpret and prescribe policy or describe the organization procedures or practice requirements of any administrative body in meeting its statutory requirements in matters affecting the rights of the public. This Act requires that commonly accepted energy equipment standards be maintained and that energy property be certified and be effective in conforming to the statutory definitions.

(f) There are no statutes, rules, regulations or governmental policies which the proposed regulation is in conflict

with, overlaps or duplicates. The Kentucky Revenue Cabinet may adopt regulations or policies that will complement this regulation which will impact claimants filing tax returns.

Tiering:
Was tiering applied? No. All applicants will be dealt with in the same manner so tiering is not applicable.

Fiscal Note
The impact of this regulation upon local governments will be negligible. Increased property value resulting from installations of a qualifying energy property will enhance the local tax base. However, there will be a loss in taxes levied against conventional energy use to the extent that the qualifying energy property reduces the use of these conventional energy forms. While the installation of an energy property may be significant in reducing conventional energy costs to the individual user, it is very negligible when considering its impact on the total tax revenues.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs.

RELATES TO: KRS 311.530 to 311.620, 311.990, 311.271
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards for approval of medical and osteopathic schools, colleges and universities in regard to the issuance and renewal of licenses and permits to practice medicine or osteopathy in the Commonwealth. The further purpose of this regulation is to assure that physicians obtain sufficient postgraduate training to enable them to practice with competency within the Commonwealth.

Section 1. Approval Necessary for Licensure. An applicant shall not obtain or retain any license or permit issued by the board unless and until the applicant provides sufficient proof that he or she is a garaduate of a medical or osteopathic school, college or university which has been approved by the board. An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) may, however, be granted such licensure without the board's prior approval of the medical or osteopathic school, college or university upon sufficient proof that the particular school does exist and the applicant is a graduate thereof. No other license or permit issued pursuant to any other statutory or regulatory provision shall be issued unless and until the applicant's medical or osteopathic school, college or university has been fully approved. The school approval requirement will not be excused because information concerning the school is not readily ascertainable.

Section 2. Medical and Osteopathic Schools Located Within the United States or Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools, colleges and universities located in the United States or Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:
(1) Located in the United States, its territories and protectorates and approved/accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association; or
(2) Located in Canada and approved/accredited by the Canadian Medical Association.

Section 3. Medical and Osteopathic Schools Located Outside the United States and Canada. Unless approval is denied or withdrawn pursuant to Section 4 of this regulation, all medical and osteopathic schools located outside the United States and Canada are approved in regard to the issuance and renewal of licenses and permits upon written proof that the particular institution is:
(1) Officially recognized in good standing by the country in which the school, college or university is located;
(2) Registered as a medical school, college or university in either the World Health Organization directory or the World Directory of Medical Schools; and
(3) Possesses a basic course of clinical and classroom medical instruction of not less than thirty-two (32) months in length that is conducted under the direct authority of the medical school, college or university.
Approval of an institution under this section should be considered in conjunction with the other requirements for licensure of graduates of medical schools, colleges and universities located outside the United States and Canada. Approval under this section should not be interpreted as a statement by the board that the particular institution is equivalent to institutions approved pursuant to Section 2 of this regulation.

Section 4. Denial or Withdrawal of Approval. The board, in its discretion, may deny or withdraw approval of any medical or osteopathic school if the particular school, college or university fails to meet the requirements for approval as established in the preceding sections or if, in the board's opinion, the approval of the particular school, college or university would not be in the best interests of the Commonwealth. If approval is denied or withdrawn the board shall issue an order delineating the grounds upon which denial or withdrawal of approval is based.

Section 5. Application of KRS 311.271. (1) An applicant shall not obtain any license or permit issued by the board unless and until the applicant provides written proof that he or she has been credited with not less than sixty (60) transferable units of study by a college or university accredited by the Southern Association of Colleges and Schools or an accrediting agency recognized by the Southern Association of Colleges and Schools; provided, however, that the executive director may determine the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.
(2) It is the declared policy of the Commonwealth that a physician, who becomes initially enrolled in a school of medicine or osteopathy after June 13, 1968, should not be authorized to practice medicine or osteopathy in this state unless and until the physician can provide satisfactory evidence that he or she has fulfilled the premedical or

preosteopathic undergraduate requirement delineated in subsection (1) of this section. Therefore, the board will not issue any license or permit to an applicant except upon the fulfillment of this requirement.

Section 6. Hearings. The board, in its discretion, may direct that formal or informal hearings be held in connection with the approval, denial of approval or withdrawal of approval of any medical or osteopathic school, college or university, or in the determination of qualification pursuant to KRS 311.271.

Section 7. Amount of Postgraduate Training Required. (1) All applicants for regular licensure who are graduates of medical and osteopathic schools located within the United States or Canada shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

(2) All applicants for regular licensure who are graduates of medical and osteopathic schools located outside the United States and Canada shall provide written proof of having completed three (3) full years of postgraduate training approved by the board.

(3) All applicants for limited licensure-institutional practice shall provide written proof of having completed one (1) full year of postgraduate training approved by the board.

Section 8. Postgraduate Training Programs Approved by the Board. (1) All postgraduate training programs in hopsitals and institutions located in the United States and approved by the Accreditation Council for Graduate Medical Education (ACGME) are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(2) All postgraduate training programs in hospitals and institutions located in Canada and approved by the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association are approved by the board in regard to the fulfillment of the postgraduate training requirement for licensure.

Section 9. Fellowship Training in the United States or Canada. The board will consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitution for the second or third year of required postgraduate training approved by the board pursuant to this regulation.

Section 10 .Repeal of Regulations. The following regulations of the board are hereby repealed: 201 KAR 9:020, 201 KAR 9:030, 201 KAR 9:040, 201 KAR 9:050, 201 KAR 9:060, 201 KAR 9:070, 201 KAR 9:080 and 201 KAR 9:085.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:021 is designed to establish standards regarding the education and postgraduate training of physicians. The regulation expounds upon KRS 311.571 which sets forth the basic criteria for licensure. Both prior law and the new statute require the board to approve the medical school attended by a physician applying for licensure in the Commonwealth. This is a sound rule for obvious reasons. It is very easy for the board to determine the standards and qualifications of medical and osteopathic schools in the United States and Canada but virtually impossible to evaluate schools abroad. Therefore, the board has established separate standards for the approval of these schools. In regard to foreign medical schools, the board has established a rather cursory standard, but has allowed the board discretion to withdraw approval of not only foreign schools but American schools which the board finds to be inadequate.

The regulation also establishes standards regarding postgraduate training. Since the board, as all American medical boards, are unfamiliar with and cannot adequately evaluate training programs abroad the board is only approving for purposes of the postgraduate training requirement programs in the United States and Canada. This board, like other medical boards in the United States, believes that a physician should receive postgraduate training in the United States in order to be well-trained as well as understand the American medical system.

This regulation also delineates the requirements of KRS 311.271 regarding undergraduate education necessary for licensure as a health care professional in this state. The regulation makes it clear that the board will not award licensure to anyone who fails to meet this statutory requirement.

This regulation will allow the board to be more efficient in its review of the education and training of applicants, but will also enable the board to better assure the competency of physicians who are licensed. The regulation should result in a cost savings since it streamlines the processes by which education and training is evaluated.

The regulation will only affect physicians applying for licensure after the effective date of this regulation. It will have no effect on state and local revenues.

The area of medical licensure is an extremely complicated one and several alternative methods were considered. After discussions with the officials of other states and the federal government, as well as the American Medical Association, it is the board's decision that this regulation implements the best mechanism available to accomplish the purpose.

This regulation generally does not conflict or overlap any statute or other regulation; however, the regulation does set forth the basic requirement of KRS 311.271 because physicians seeking licensure here are usually unaware of KRS 311.271 since it does not appear in the body of the Kentucky Medical and Osteopathic Practice Act. The regulation will hopefully call their attention to this statute.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:023. Endorsement.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards for the endorsement of a physician by the licensing authority of another jurisdiction to the board.

Section 1. Endorsing Bodies Recognized by the Board. An applicant may fulfill the examination requirement for licensure without further testing in this state upon certified written endorsement that the applicant has successfully completed an examination approved by the board in accordance with the requirements of 201 KAR 9:031 from any of the following entities:

(1) Licensure authority of another state, United States territory or Canadian province;
(2) National Board of Medical Examiners;
(3) National Board of Examiners for Osteopathic Physicians and Surgeons; and
(4) Federation of State Medical Boards of the United States, Inc.

Section 2. Endorsement Defined. Endorsement means the written certification of an authorized officer of a recognized entity that the applicant is in good standing and has successfully completed an examination recognized by this board. Endorsement should not be confused with "reciprocity" which is not recognized as a licensure mechanism by this board. Endorsement only results in the fulfillment of the examination requirement for licensure if the requirements of 201 KAR 9:031 have been satisfied.

Section 3. Endorsement by the Board. The board will not endorse any physician to the licensure authority of another state, United States territory or Canadian province unless the physician holds a valid, current and effective license to practice medicine or osteopathy in the Commonwealth.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt
201 KAR 9:023 establishes standards for endorsement in regard to the satisfaction of the testing examination requirement for licensure. The regulation delineates those entities from which the board will accept endorsement which will result in the fulfillment of the examination requirement. The regulation also defines "endorsement" and states that the board will not endorse anyone as having passed an exam in Kentucky and as being in good standing in Kentucky unless that person holds a valid and effective license in this state.

This regulation will have no effect on board revenues or the revenues of state and local governments. This regulation will help streamline the administrative process of endorsement by setting forth specific standards which can be easily understood and followed.

Alternative methods were not considered as none are practically available.

This regulation does not conflict with, overlap or duplicate any statute or other regulation.

Tiering:
Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:024. Application and reregistration forms; personal interviews; hearings.

RELATES TO: KRS 311.530 to 311.610, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish a basis for the gathering of information necessary for the thorough evaluation of an applicant for any license or permit issued by the board.

Section 1. Forms. The executive director shall prepare whatever forms are needed to obtain all information necessary for evaluating applicants in regard to the requirements for obtaining, maintaining and reobtaining licenses and permits issued by the board. The executive director may require the production of photographs, fingerprints and other personal history data as necessary. All forms to be signed by the applicant shall be notarized as having actually been signed by the applicant and as being a true and accurate statement of the matters contained therein.

Section 2. Application Effective Upon Completion. An application for a license or permit, for the renewal or registration of a license or permit or for the reregistration of a license will not be effective for purposes of review for approval unless and until the appropriate forms have been satisfactorily completed and all other requested information has been produced. The executive director, in his discretion, may temporarily excuse the satisfactory completion of any form or production of any requested item if it would cause an undue hardship to the applicant or the general public.

Section 3. Personal Interviews. The executive director may require any applicant to appear before him, his designee or the board in regard to any matter relating to the requirements for licensure.

Section 4. Hearings. The board, in its discretion, may

direct formal or informal hearings be held in connection with any matter relating to the qualifications for licensure of any applicant or group of applicants.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:024 is a regulation to enable the Kentucky Board of Medical Licensure to have a structure for obtaining information necessary for the proper evaluation of applicants for the various licenses and permits issued by the board. There are currently approximately 6,000 physicians licensed in the Commonwealth of Kentucky, and this board receives numerous applications each year. In order that these applications may be processed in an orderly fashion, the board wishes to establish rules for their submission to the board's staff and review by the board for its approval.

The cost to the agency in regard to the preparation of forms necessary for the obtaining of information is no greater than in past years. Therefore, this regulation has little or no effect on board revenues.

This regulation only effects physicians licensed or applying for licensure in the Commonwealth. Indirectly, it may effect hospitals and other health care facilities, a number of which assume the responsibility of preparing forms for physician employees.

No alternative methods were considered as this regulation adequately establishes the mechanism necessary for the collection of information.

This regulation is not in conflict, does not overlap and does not duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:025. Interpretation and application of KRS 311.571(8).

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish policy and guidelines regarding the application of KRS 311.571(8).

Section 1. Definitions. (1) As used in KRS 311.571(8), "extraordinary circumstances" shall be interpreted by the board as special circumstances of licensure beyond the general application of a basically qualified physician wishing to practice in Kentucky. In order to grant licensure under this statute the board must find that either one of the Commonwealth's medical schools or an area or group of patients will be specially benefited by the board's granting of licensure. Extraordinary circumstances will not be found on the basis of an area's physician shortage or the desire of any person or persons that the physician be licensed.

(2) As used in KRS 311.571(8), "exceptional education, training and practice credentials" shall be interpreted by the board as credentials of a character far beyond those generally presented by applicants seeking licensure. In order to grant licensure under this statute, the board must find that the applicant is a graduate of a medical or osteopathic school of proven quality and/or has received advanced degrees from reputable graduate study programs in medicine, has completed at least three (3) years of postgraduate training recognized by the board to be of high quality and has proven his or her abilities through verifiable practice experience.

Section 2. Application. An applicant may not apply directly pursuant to KRS 311.571(8) but may request the executive director to present his application for the board's review under KRS 311.571(8). The executive director shall have the discretion, based upon his or her evaluation of the applicant's credentials and the circumstances involved, to refuse to present the application pursuant to this statute. The executive director may require the applicant to provide written and oral documentation and other evidence to aid his or her evaluation.

Section 3. Limitation Upon Licensure if Granted. The board may grant regular or limited licensure pursuant to KRS 311.571(8) and may place restrictions upon the licensure of anyone who is granted licensure pursuant to this statute. It is the policy of the board to grant licensure under this statute only to physicians of whose competency and fitness the board is assured, and, in any circumstance, to only grant licensure sufficient to satisfy the extraordinary circumstances that are present.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:025 submitted in regard to KRS 311.571(8) empowers the board to grant licensure without specific regard to the requirements set forth in the other sections of the statute but only in extraordinary circumstances and if the applicant presents "exceptional education, training and practice credentials." The purpose of this regulation is to define "extraordinary circumstances" and to define "exceptional education, training and practice credentials." It is the intention of the board that this regulation only be applied to allow the licensure of individuals whom the

board is absolutely assured of their high quality of education, training and practice as proven through years of experience. It is also the intention of the board that licensure only be granted in "extraordinary circumstances" which is defined narrowly. It is the board's position that to allow other interpretations of this statute would be to make a mockery of the licensure requirements. The regulation also establishes the procedure by which approval may be sought under this statute.

This regulation will only effect a few physicians of extraordinary professional ability who occasionally come to Kentucky as instructors or in regard to a specific medical situation. The regulation will have no effect on board revenues or the revenues of state and local government. The regulation will be of benefit to the administration of the board as it will establish standards which can be understood and followed.

Alternative regulatory schemes were considered, however, the board feels that the one that was adopted is necessary and appropriate given the circumstances of medical licensure.

This regulation does not conflict with, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and rules regarding examination scope, content, passing scores, testing opportunities and test score recognition.

Section 1. Basic Requirement; Passing Score. All applicants for any license or permit issued by the board shall provide written proof of having successfully completed an examination approved by the board with an overall average score of seventy-five (75) or its numerical equivalent. The overall score must have been determined on the basis of performance in a single sitting and scores based on an average of scores from multiple sittings will not be considered.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The Federation Licensure Examination (FLEX);

(3) The examination administered by the National Board of Medical Examiners; and

(4) The examination administered by the National Board of Examiners for Osteopathic Physicians and Surgeons.

The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

Section 3. Examination Administered by Board; Reexamination; Test Score Recognition. (1) The board will administer the Federation Licensure Examination (FLEX) twice yearly in accord with protocol established by the Federation of State Medical Boards of the United States, Inc. The executive director shall oversee the examination and may expel any person for fraudulent or disruptive behavior.

(2) An applicant shall be denied the opportunity to sit for the FLEX in the Commonwealth if the applicant has failed the examination on three (3) previous occasions, regardless of where these examinations were taken; provided, however, that an applicant shall be granted the opportunity to sit for the FLEX a fourth time upon providing written proof that he or she began and satisfactorily completed one (1) full year of approved postgraduate training after the applicant's third failure. An applicant who has failed the FLEX on four (4) previous occasions will not under any circumstance be granted the opportunity to sit for the examination in the Commonwealth.

(3) In regard to the fulfillment of the examination requirement, the board will only recognize a passing score on the FLEX if the applicant has not failed the FLEX on three (3) previous occasions regardless of where taken; provided, however, that a passing score on the applicant's fourth attempt will be recognized if that examination was administered in the Commonwealth pursuant to subsection (2) of this section.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:031 establishes standards and rules regarding the examination requirements for medical and osteopathic licensure in the Commonwealth of Kentucky. It is the policy of the board that a physician must have achieved a score of 75 or its numerical equivalent on examinations recognized by the board in order to satisfy the examination requirement. This regulation sets forth the examinations which the board believes adequately test the knowledge, education, training and competency of physicians. The regulation also sets forth limits on the number of times an individual may fail the Federation Licensure Examination, the only one administered by the board, and still obtain licensure.

This regulation will only effect physicians seeking licensure in the Commonwealth for the first time. It will have

no financial impact on the Board. It will have no impact on state and local revenues.

The intent of the regulation is to establish standards regarding the examination requirement. There were no alternative methods available for accomplishing the purpose of the regulation which is to insure the competency of physicians being licensed in this state.

This regulation does not conflict, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:041. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish a schedule of fees for services rendered by the board.

Section 1. Fee Schedule.

(1) Fee for sitting for examination administered by board $185
(2) Fee for initial issuance of regular license..... $150
(3) Fee for initial issuance of limited license..... $65
(4) Fee for annual registration or renewal of any license $65
(5) Penalty for late annual registration or renewal .. $25
(6) Fee for reregistration of inactive license $25
(7) Endorsement of licensee to licensing agency of another jurisdiction $20
(8) Certification of licensee's examination grades to licensing agency of another jurisdition $10
(9) Fee for temporary permit (credited to fee for regular license if subsequently issued)..... $50
(10) Fee for emergency permit $15
(11) Fee for duplicate license certificate $10
(12) Fee for copy of "Kentucky Medical Directory" (fee waived for licensees, hospitals, schools and other licensure boards) $5
(13) Fee for one (1) year subscription to Newsletter (fee waived for licensees) $5

C. WILLIAM SCHMIDT
Executive Director

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:041 establishes a schedule for fees for the various services, licenses and permits provided by the board. The fee schedule has been restructured to better reflect the actual item for which a fee is being paid. The fees charged for various licenses and services have actually not been changed, except that the fee for sitting for the examination and the fee for initial licensure have been separated. Presently, the fee for examination and original licensure impacts applicants differently depending on whether they take the examination in Kentucky or elsewhere. The change has been made in order to bring more equity into the fee system.

The new fee schedule, because of the separation of the fee for examination and the fee for regular licensure, will result in a small increase in revenue. This revenue, however, will be offset by the costs involved in application review which has been changed to allow the board to have more information before it and a better mechanism for evaluating that information.

This regulation will have no effect on state and local revenues. This regulation is not in conflict and does not duplicate any statute or other regulation.

No alternative measures were considered as none are available.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:051. License renewal and registration; reregistration of inactive license.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish procedures and rules regarding the annual renewal and registration of licenses and the reregistration of inactive licenses.

Section 1. Annual Renewal and Reregistration. (1) On or about January 1 of each year, the executive director shall mail written notification to all physicians holding a regular license to practice medicine and osteopathy in the Commonwealth that annual registration of their license must be executed on or before March 1. The notification shall indicate the annual registration fee and shall warn the licensee that failure to timely register will cause his or her license to become inactive.

(2) On or about January 1 of each year the executive director shall mail written notification to all physicians holding a valid and active limited license-institutional practice or limited license-general practice which had been issued to the holder on or before September 1, 1972, that annual renewal of their limited license must be executed on or before March 1. The notification shall indicate the annual renewal fee and shall warn the limited licensee that

failure to timely renew will cause his or her limited license to be cancelled and unreissuable.

(3) On or about thirty (30) days prior to the expiration of a limited license-institutional practice issued pursuant to KRS 311.571(4) or as a training permit under prior law, the executive director shall mail written notification to the physician that his or her limited license will expire on an indicated date, being one (1) year from the date of issuance. The notification shall inform the holder that he or she must obtain a limited license-institutional practice pursuant to KRS 311.571(3) on or before the expiration date and shall warn the holder that if the physician fails or is unable to obtain such a limited license or a regular license the physician will no longer have licensure authority to practice in the Commonwealth.

(4) On or about thirty (30) days prior to the expiration of a limited license-institutional practice issued pursuant to KRS 311.571(3) the executive director shall mail written notification to the limited licensee that his or her limited license will expire unless renewed on or before the expiration date, being one (1) year from the date of issuance. The notification shall indicate the annual renewal fee and shall warn the limited licensee that failure to timely renew will cause his or her limited license to be cancelled.

Section 2. Questionnaire Concerning Matters of Licensure and Discipline. In conjunction with any notification required to be sent by Section 1 of this regulation, the executive director shall also send the licensee a questionnaire concerning matters of licensure and discipline to allow the board to better evaluate the continued fitness of physicians practicing in the Commonwealth. The questionnaire shall be signed by the licensee and verified by a notary. A license will not be renewed, registered or reregistered unless and until the questionnaire has been completed to the executive director's satisfaction.

Section 3. Late Registration or Renewal. Any physician holding either a regular license, a limited license-institutional pratice pursuant to KRS 322.571(3), a limited license-institutional practice issued prior to September 1, 1972, or a limited license-general practice who fails to register or renew for the coming year on or before the date designated on the notification shall be sent a second notification that shall indicate the annual registration or renewal fee, the penalty fee for late registration or renewal and the time allowed for late registration or renewal which shall not be longer than thirty (30) days beyond the date designated on the first notification for registration or renewal. In the event the licensee fails to register or renew his or her license by the date designated on the second notification, the license will be considered inactive or cancelled accordingly and continued practice by the physician will be considered the unauthorized practice of medicine or osteopathy.

Section 4. Reregistration of Inactive Regular License. Upon failure of a licensee to register his regular license for the year before the expiration of the time allowed for late registration, the license shall become inactive and continued practice by the physician will be considered the unauthorized practice of medicine or osteopathy. At any subsequent time the holder of an inactive license may seek reregistration of his or her license by paying the annual registration fee and the fee for reregistration, and satisfactorily completing the forms necessary for obtaining sufficient information concerning the reregistrant's present fitness to practice.

Section 5. All notifications required to be sent by this regulation shall be mailed to the licensee's last known address of which the board has record. Failure of the licensee to receive notice if mailed to the last known address will not excuse the licensee from compliance with the statutes or this regulation.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:051 establishes requirements and standards regarding the renewal and registration of active licenses and the reregistration of inactive licenses. The regulation establishes January 1 as the normal date for annual renewal of regular licenses and March 1 as the deadline for registration. The regulation also establishes a period for renewal of limited licenses. The regulation further establishes a guideline for determining when a license becomes inactive and, therefore, ineffective. After that date, the license will have to be reregistered according to procedures set forth in the regulation. The regulation also establishes that no application for renewal, registration or reregistration will be considered unless and until a comprehensive questionnaire concerning the physician's practice has been completed. The purpose of this questionnaire is to allow the board to better evaluate the competency and conduct of physicians licensed by the board.

This regulation will not have any substantial impact on the board's revenues although it should save the board some revenue by allowing for a more definite and streamlined process for renewal of registration and reregistration. It will have no effect on state and local revenues. This regulation will also allow the board to process the forms involved in renewal, registration and reregistration in a more timely and efficient fashion.

No alternative measures were considered as none are available. This regulation does not conflict with, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:061. Limited licenses.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to

establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and guidelines regarding the issuance and renewal of limited licenses.

Section 1. Applicability. An applicant for limited license-institutional practice pursuant to KRS 311.571(3) or 311.571(4) shall not be issued a license or permit unless and until the applicant provides written proof that he or she is officially enrolled in a postgraduate training program in the Commonwealth approved by the board.

Section 2. Scope of Practice. A limited license-institutional practice issued to a physician in an approved postgraduate training program shall enable the holder to practice as a physician within the parameters of the training program. The executive director may suspend any such limited license-institutional practice upon evidence that the holder has practiced outside the scope of his or her licensure.

Section 3. Applicability and Scope of Limited Licenses Held Prior to September 1, 1972. (1) All persons who as of the effective date of this regulation hold a valid and current limited license-institutional practice issued to them prior to September 1, 1972, may continue to hold their licenses if annually renewed. The holder may only practice within the confines of the institution for which his or her limited license is designated.

(2) All persons who as of the effective date of this regulation hold a valid and current limited license-general practice issued to them prior to September 1, 1972, may continue to hold their licenses if annually renewed. The holder may only practice within the confines of the geographical area for which his or her limited license is designated.

(3) Any limited license held prior to September 1, 1972, which is not timely renewed each year by the holder shall lapse and become void and the limited license will not be reissued under any circumstance. Practice outside the scope of the limited license shall result in the temporary suspension of the license and possible discipline. The board will not issue any new limited licenses like those described in this section and a limited license-institutional practice will not be converted to a limited license-general practice.

Section 4. Extent of Practice Allowed Under Limited License. A physician holding a limited license possesses all the powers of a physician allowed by the laws of the Commonwealth, to practice within the limited scope of his or her licensure; provided, however, that the holder of a limited license-general practice shall not perform surgery unless expressly authorized by the board.

Section 5. Form of License. All limited licensees shall be issued a certificate which shall state on its face whether it is a limited license-institutional practice (KRS 311.571(3) or 311.571(4)), a limited license-institutional practice (KRS 311.565(15)) or a limited license-general practice (KRS 311.555(15)). The certificate shall also indicate the institution or geographical area to which the holder's practice is limited and any limitations on the holder's scope of practice.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:061 establishes standards and requirements for the issuance and retention of limited licenses in the state. The regulation distinguishes limited license-institutional practice to be issued pursuant to the new statute and limited license-institutional practice or limited license-general practice issued prior to September 1, 1972. The regulation establishes the scope of practice for all types of limited licenses and the criteria under which they will be issued.

This regulation will effect those persons seeking to obtain postgraduate training in Kentucky who do not meet the requirements for regular licensure. The regulation concerns the requirements which must be met in order for an individual to be given a limited license-institutional practice in order to obtain training in Kentucky. This regulation also concerns those persons who held limited licenses prior to September 1, 1972, but in no way effects the right to maintain that license as long as it is annually renewed.

This regulation has no effect on the board's revenues or on the revenues of state and local governments. The area of limited licensure is extremely complex, however, alternative methods are really not practical and were not considered. The regulation should streamline the process for granting and renewing limited licenses and therefore ease the administrative burden upon the board.

This regulation does not conflict, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:071. Temporary and emergency permits.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and rules regarding temporary and emergency permits.

Section 1. Temporary Permits. Upon satisfactory completion of all forms and the submission of all necessary information in connection with an application for regular licensure to practice medicine or osteopathy, the
xecutive director may issue a temporary permit to the applicant if the executive director believes that the applicant satisfies all the requirements for regular licensure and is otherwise fit to practice. The temporary permit shall enable the holder to practice as allowed pursuant to KRS 311.575 and shall remain in effect until the holder is issued

a regular license by the board or until cancelled, but in no event shall the temporary permit be effective longer than six (6) months from the date of issuance. Denial of an application for regular licensure by the board shall cause the cancellation of a temporary permit if held by the applicant. A termporary permit may not be renewed or reissued.

Section 2. Emergency Permits. A physician licensed in good standing in another state or Canadian province may obtain an emergency permit to practice medicine or osteopathy in the Commonwealth for a period not to exceed thirty (30) days when in the executive director's opinion, based on verifiable information, the physician satisfies the requirements for regular licensure pursuant to KRS 311.571(1) or (2) and an actual medical emergency exists. A medical emergency shall be considered to exist if, in the executive director's opinion, a real and substantial threat to public health or the health of an individual exists which cannot be cured except upon the issuance of the emergency permit. The emergency permit may not be renewed or reissued and shall be immediately cancelled if the medical emergency ceases to exist prior to the passage of thirty (30) days from issuance. An emergency permit may be cancelled by the executive director without a prior hearing when in the executive director's opinion, based upon reasonable cause, the continuance of the permit would not be in the best interest of the Commonwealth. An emergency permit does not enable a physician to practice beyond the geographical area or scope of practice encompassed by the medical emergency.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:071 is a regulation establishing requirements and standards relating to the issuance of temporary and emergency permits. This regulation expands present regulations concerning the subject which are presently inadequate. This regulation defines "medical emergency" which must exist in order for an emergency permit to be issued. The regulation contains safeguards so that persons holding temporary emergency permits will not be allowed to continue to practice in the event it is determined that they are not qualified pursuant to the board's standards for licensure. This regulation effects many physicians applying for regular licensure since temporary permits are issued to them if they meet the requirements for licensure until such time as the board meets to approve their application. The board issues only several emergency permits each year.

This regulation will have no effect on board revenues and will have no effect on state and local revenues. No alternative methods were considered as none are available. This regulation does not conflict, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board or before any committee to the board, such that the proceedings will be conducted with due regard for the rights and privileges of all affected parties.

Section 1. Scope. This regulation shall govern practice and procedure in regard to all disciplinary matters before the Kentucky Board of Medical License pursuant to KRS 311.520 et seq.

Section 2. Definitions. (1) "Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Committee" means the physician review advisory committee unless otherwise indicated from the context.

(4) "Board" means the Kentucky Board of Medical Licensure.

(5) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(6) "Charge" means a specific allegation contained in any document issued by the board or its committees alleging a violation of a specified provision of the Kentucky Medical and Osteopathic Practice Act.

(7) "Complaint" means a formal administrative pleading authorized by the board that sets forth charges against a physician and commences a formal disciplinary proceeding.

(8) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(9) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(10) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(11) "Act" means the Kentucky Medical and Osteopathic Practice Act.

Section 3. Reception of Grievances; Investigations. (1) Grievances may be submitted by any individual, organization or entity. The board shall retain a written form upon which grievances may be made and any party submitting a

grievance may be required to complete the form and may also be required to give their affidavit acknowledging the truth and veracity to the best of their knowledge and belief of the information contained in the grievance.

(2) All grievances shall be investigated as necessary and presented to the committee for review unless the circumstances of a particular grievance make it impossible to timely present the grievance to the committee. The committee shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The committee shall further be empowered to request the attendance of any person at any meeting of the committee in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the committee when requested shall be considered unprofessional conduct.

(3) The committee shall be empowered to request compliance with the reporting requirements of KRS 311.605-311.606 and may pursue investigations, on its own initiative, in regard to acts of non-compliance or any other perceived violation of the Act.

Section 4. Reports and Recommendations; Petitions. (1) When in the opinion of the committee a grievance does not warrant the issuance of a complaint against a physician, the committee shall submit a written report to the board briefly denoting the committee's findings and recommending an appropriate course of action.

(2) When in the opinion of the committee a grievance warrants the issuance of a complaint against a physician, the committee shall cause a complaint to be prepared together with a petition, signed by the chairman or vice-chairman on behalf of the committee, stating the committee's belief that the charges are based upon reliable information and requesting the board to authorize the issuance of the complaint.

(3) When in the opinion of the executive director a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the committee, the executive director shall cause a complaint to be prepared together with a petition, signed by the executive director, stating the executive director's belief that the charges are based upon reliable information and requesting the board to authorize the issuance of the complaint.

(4) When in the opinion of the executive director or the committee a disciplinary matter warrants the board's issuance of a show cause order against a physician, the executive director or the committee shall cause a proposed order to be prepared together with a petition briefly delineating a basis for the issuance of the show cause order and requesting the board to issue the order.

(5) The board, on its own initiative, may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining or reobtaining licensure.

(6) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.

Section 5. Complaints. (1) The complaint shall be signed by the party petitioning the board for its issuance and shall be dated. the complaint shall be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and shall be designated with an appropriate case number.

(2) The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 6. Show Cause Orders. (1) The show cause order shall be signed by an officer of the board and shall be dated. The show cause order shall be styled in regard to the license, application for license or application for renewal, registration or reregistration of license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and shall be designated with an appropriate order number.

(2) The show cause order shall set forth the board's jurisdiction in regard to the subject matter of the order and shall further set forth, in numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license or for the denial of the named physician's application for obtaining, retaining or reobtaining licensure appropriately.

(3) The show cause order shall direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order. The order may direct the named physician to appear at a designated time and place, provided that the named physician receives notice at least thirty (30) days prior to the hearing.

Section 7. Authorization of Complaint by Board; Orders to Respond. (1) Upon being presented with a petition requesting the issuance of a complaint, the board shall, within sixty (60) days, grant or deny the petition. If the petition is granted, the board shall issue an order authorizing the complaint's issuance, directing the charged physician to respond within thirty (30) days after receiving notice of the complaint, and informing the physician that failure to respond may be taken by the board as an admission of the charges.

(2) If the board denies a petition, the board may remand the matter to the committee, with or without directions, or may order that action be taken different from that requested in the petition.

(3) The board may, in its discretion, grant a petition only in part and may modify a requested complaint prior to authorizing its issuance.

Section 8. Petitions Requesting Orders of Temporary Restriction; Orders of Temporary Restriction. (1) Petitions requesting the board to issue and order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the petitioning party believes supports a finding by the board that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public. All petitions requesting temporary disciplinary action by the board shall be verified by the petitioning party and shall set forth the type of temporary disciplinary action which the petitioning party believes to be warranted.

(2) Upon being presented with a petition requesting the board to issue an order temporarily suspending, limiting or restricting the license held by the named physician, the board shall, within sixty (60) days, grant the petition and issue an order, with or without modification of the requested temporary discipline, or, shall deny the petition. If

the board grants the petition, the ensuing order shall briefly set forth the grounds which the board believes support a finding that sufficient reasonable cause exists for the order's issuance.

(3) Except in extraordinary circumstances when the demands of time and circumstances do not allow, at least ten (10) days prior to the presentation of the petition the petitioning party shall notify the named physician, in writing, of the nature of the charges contained in the complaint and the petitioning party's intention to request an order temporarily suspending, limiting or restricting the physician's license. The named physician may respond to the charges informally, either orally or in writing, and the board shall consider the response in determining whether to grant the petition.

(4) The grant or denial of a petition requesting an order temporarily suspending, limiting or restricting the named physician's license shall not affect the board's discretion regarding the issuance of any complaint or other document and shall further not be construed as a finding of any ultimate fact in regard to charges contained in any complaint.

Section 9. Notice and Service of Process. (1) Any notice required by the Act or this regulation shall be in writing, dated and signed by the appropriate person.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license.

Section 10. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order within fifteen (15) days after making the request unless otherwise agreed. The hearing shall be limited to the sole purpose of determining whether the board's order was based on sufficient reasonable cause, provided, however, that the charged physician shall have the right to present evidence that indicates that the information upon which the board based its order was untrue or that the danger that existed at the time the order was issued has since been dissipated or alleviated.

(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the board in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the hearing on the complaint.

(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.

(4) Either party to the hearing on the order of temporary discipline may petition the board to review the order of the hearing officer either sustaining, modifying or withdrawing the board's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the board to review the hearing officer's determination. The board may grant or deny review in its discretion.

(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.

Section 11. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing office. The board shall appoint a hearing officer who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and disciplinary measures to the board and to perform any other act necessary to the proper conduct of the proceedings.

(2) Appointment of the prosecuting attorney. The board's general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, provided, however, that the board may appoint special prosecuting attorneys in its discretion. The prosecuting attorney shall not be present during any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline unless otherwise agreed to by the charged physician.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline, provided, however, that an attorney may not act as advisory counsel if the attorney was substantively involvd in the investigation or prosecution of the matter before the board.

(4) Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the

Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissable unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements by either party, or other offers of prosection or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) Record. The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) Presentation of record, hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the board. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the board's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the board's final determination.

(10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs to be filed with the board prior to the board's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the board in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The board may, on its own initiative, order that briefs be submitted.

(11) Oral argument. Any party to the proceeding may move the board to allow oral argument before the board sitting en banc prior to the board's final determination. The board may order oral arguments on its own initiative.

(12) Board's findings of fact, conclusions of law and final order, remand. At the conclusion of its deliberations the board may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The board shall enter a final order dated and signed by an officer of the board stating its ultimate determination. Prior to, during or subsequent to any deliberations the board may remand the matter to the hearing officer for further proceedings as directed.

C. WILLIAM SCHMIDT, Executive Director
APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:081 is a regulation designed to establish standards and rules regarding the conduct of disciplinary proceedings before the board and its disciplinary committees. The regulation is modeled after similar regulations and statutes in other states. It is designed to be comprehensive while allowing appropriate leeway for the board's discretion and that of its officers. The regulation accords sufficient and appropriate due process to physicians before the board on disciplinary matters and will enable the board to pursue disciplinary matters in a more effective and efficient manner.

This regulation will allow the board to possibly realize a cost savings as it sets forth rules for various procedural issues which in the past had to be decided by the hearing officer after appropriate briefing and argument. The regulation will only effect physicians before the board on disciplinary matters.

Alternative methods of achieving the purpose of setting up guidelines for disciplinary proceedings were reviewed but were rejected because this regulation sets forth comprehensive guidelines but does allow appropriate discretion for board officials to address any matter which may arise. It is the board's opinion that the "rules of the game" should be set out with some clarity so that those appearing before the board will not be prejudiced.

This regulation does not conflict, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:082. Informal proceedings.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish rules regarding the institution of informal proceedings pursuant to KRS 311.591(10).

Section 1. Commencement of Informal Proceedings. At any time after the authorized issuance of a compliant or the issuance of a show cause order, the responding physician may seek an informal dispensation of any matter upon signing a waiver that states that the physician waives his or her right to raise any constitutional, statutory or common law objection should the board reject the informal proposal or if informal proceedings are curtailed by the general counsel. The general counsel shall have complete discretion to negotiate with the responding physician concerning stipulations of fact, conclusions of law and proposed discipline. The general counsel shall also have discretion to reject any or all offers of informal dispensation and may commence informal proceedings on his or her own initiative.

Section 2. Presentation of Proposal to Board. Whenever the general counsel believes that an appropriate informal dispensation has been negotiated, he or she shall cause to be presented to the board the responding physician's signed waiver and stipulations of fact, conclusions of law and a proposed order of informal dispensation signed by the responding physician and the general counsel. The documents shall include a line for the signature of an officer of the board and shall become effective upon being accepted by the board, signed by an officer and filed of record.

Section 3. Effect of Rejection. If the board rejects an offer of informal dispensation, the matter shall continue to proceed as a formal proceeding, provided, however, that further informal negotiations may be conducted and subsequent offers of informal dispensation presented to the board. Rejection shall not be taken as a finding or determination of any kind on behalf of the board and no orders or other pleadings shall be filed of record in regard to any rejected proposal.

Section 4. Oral or Written Presentation. The board may allow oral or written presentation before the board in regard to any offer of informal dispensation. Oral presentations shall not be recorded and written presentations shall not be filed of record or included in the board's minutes. All oral and written presentations shall be heard and considered in closed session.

C. WILLIAM SCHMIDT
Executive Director

APPROVED BY AGENCY: July 13, 1984
FILED WITH LRC: July 13, 1984 at 11:45 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 24, 1984, at 1:00 p.m. at the offices of the Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

201 KAR 9:082 sets forth requirements and standards regarding informal proceedings as is called for by KRS 311.591(10). It is the board's belief that many disciplinary matters before it can be dispensed with in informal proceedings thus avoiding the costs involved in formal disciplinary proceedings. The regulation is designed to avoid due process problems that could arise in the implementation of informal proceedings such as these. Certainly, the regulation will allow the board to process disciplinary matters in a more efficient fashion saving staff time.

The regulation will be a cost savings to the board if exercised by physicians under review, but will have no effect on state and local revenues. No alternative regulatory schemes were considered as the one offered should operate quite well.

The regulation will certainly effect all physicians who are charged by the board with disciplinary violations. The regulation does not conflict with, overlap or duplicate any statute or other regulation.

Tiering:

Was tiering used? No. Medical and osteopathic licensure and discipline is implemented uniformly in regard to all physicians who have equal rights and responsibilities.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:190. Falconry and raptor propagation.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.183, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360

PURSUANT TO: KRS 13A.350

NECESSITY AND FUNCTION: This regulation pertains to the securing of and use of birds of prey for breeding and hunting. It is necessary for the continuing protection and conservation of the birds of prey to insure a permanent and continued supply of this wildlife resource for the purpose of furnishing ecological balance, sport and recreation for present and future residents of the state. This regulation is also necessary to comply with corresponding federal regulations.

Section 1. Practice of Falconry. (1) License and permits. Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor listed in subsection (2)(a) of this section, provided the falconer has in possession a valid state/federal falconry permit(s) and a valid Kentucky resident or nonresident hunting license.

(2) Definitions.

(a) Legal hunting raptors include the great horned owl and all hawks and falcons of the families Falconidae and Accipitridae, except those that are endangered or threatened and except the eagles. However, under conditions described in Section 2(2)(c) of this regulation, golden eagles as well as threatened species, may be used for falconry.

(b) Exotic raptors are those species which have no subspecies occurring in the wild in the United States nor Mexico. Any person holding a joint state/federal falconry permit may possess lawfully acquired exotic raptors in addition to the number of non-exotic raptors legally held.

Section 2. Permits and Sponsors. (1) Applications. To obtain a permit, an applicant must submit to the Department of Fish and Wildlife Resources the standard application for falconry permit, and must pass the examination required by this regulation.

(2) Classes of permits.

(a) Apprentice falconry permits. Apprentice falconers shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit. Applicants between the ages of fourteen (14) and sixteen (16) years shall provide written consent from a parent or guardian. An apprentice may take and possess only one (1) non-exotic raptor, which must be taken from the wild, and must not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild. Only an American kestrel (sparrow hawk), red-tailed hawk, red-shouldered hawk or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer. The above named red-tailed and red-shouldered hawks must be first-year (passage) age class birds, capable of flight. Any sparrow hawk which has left the nest and is capable of flight may be taken from the wild. There is no age restriction on exotic raptors. Apprentice falconers are permitted to buy and sell only exotic raptors.

(b) General falconry permits. General permittees shall be at least eighteen (18) years of age, have at least two (2) years experience in the practice of falconry at the apprentice level, and have complied with reporting requirements of this regulation. A permittee at the general level may possess no more than two (2) non-exotic raptors, and is not permitted to take more than two (2) replacements from the

wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. General permittees may take and possess any legal hunting raptor defined in this regulation.

(c) Master falconry permits. Master permittees shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with reporting requirements of this regulation. A master permittee may possess no more than three (3) non-exotic raptors. No more than two (2) raptors for replacement birds may be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. A master permittee may take and possess any legal hunting raptor, but is not permitted to take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in Title 50 Code of Federal Regulations (CFR), Subchapter B, Part 17.11 and then only when approved by the U.S. Fish and Wildlife Service and the department. Master falconers may replace any number of captive bred raptors a year provided the possession limit at one (1) time is not exceeded. Provided a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and Title 50 CFR, Subchapter B, Part 22.24, master permittees may take and possess golden eagles for falconry purposes. Master permittees are not permitted to take any species listed as endangered by Title 50 CFR, Subchapter B, Part 17.11, but may possess such species in accordance with the Endangered Species Act and implementing regulations.

(3) Duration of permits. Permits shall be valid for a period of one (1) year from date of issue, or from the expiration date of a permit being renewed.

(4) Sponsors. Sponsors must hold a master or general falconry permit. A sponsor must not have more than three (3) apprentices at any one (1) time. A sponsor withdrawing sponsorship shall notify the department giving reasons for withdrawal and shall notify the apprentice. If the apprentice does not find a new sponsor within thirty (30) days from the the date of notification of withdrawal, his permit will be cancelled and his birds relocated.

Section 3. Examinations. To obtain a Kentucky falconry permit, an applicant must answer correctly at least eighty (80) percent of the questions on a supervised examination approved by the U.S. Fish and Wildlife Service in accoprdance with Title 50 CFR, Subchapter B, Part 21.29. This test shall be administered by the department.

Section 4. Facilities and Equipment. Facilities and equipment shall meet the minimum federal falconry standards described in Title 50 CFR, Subchapter B, Part 21.29. They must be maintained at that level. Facilities, equipment and raptors shall be available at all times for inspection by authorized personnel of the department and the U.S. Fish and Wildlife Service.

Section 5. Inventory and Marketing. (1) All individuals holding raptors, for other than scientific or zoological purposes, shall give the department an inventory of raptors held, by species, age (if known) and sex (if known) at the time of application for a falconry permit, and each time it is renewed thereafter.

(2) All raptors held in captivity, except those held for scientific or zoological purposes, shall be identified with affixed numbered non-reusable markers supplied or approved by the U.S. Fish and Wildlife Service. Alteration, counterfeiting or defacing these raptor markers is prohibited except that permittees may remove the rear tab of the marker, and may smooth any imperfect surface provided the integrity of the marker and numbering are not affected. No raptors may be imported into Kentucky without such federal markers affixed.

Section 6. Taking Raptors. (1) Licensing. Holders of Kentucky falconry permits must have in possession a valid Kentucky hunting license before taking a raptor from the wild. Before taking or attempting to take a raptor from the wild, a nonresident must have a Kentucky nonresident hunting license and a joint state/federal permit or individual state and federal falconry permits from his or her home state and a special permit from the department.

(2) Eyasses. Young birds not yet capable of flight (eyasses) may be taken only by a general or master falconer and only during the period May 1 through July 14, and no more than two (2) eyasses may be taken from the wild by the same permittee during this period. At least one (1) young must be left in the nest.

(3) Passage birds. First-year (passage) birds may be taken only during the period September 18 through December 31.

(4) Retrapping. A raptor marked in accordance with Section 5(2) of this regulation and the Federal Raptor Propagation Regulation, Title 50 CFR, Subchapter B, Part 21.30, may be retrapped at any time.

(5) Mature birds. Only sparrow hawks and great-horned owls may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation (or special purpose) permit may be used for falconry by general and master falconers. All traps or other devices for taking raptors alive must be tagged with the owners' name and address.

Section 7. Raptors Acquired Before 1977. (1) A person who possesses raptors legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the raptors with a non-hunting raptor permit. These raptors cannot be replaced nor used for hunting. Facilities and equipment for holding them must meet the standards referenced in Section 4 of this regulation.

(2) A falconry permittee who legally possesses raptors acquired before January 1, 1977, in excess of the number allowed under his or her class permit, shall be allowed to retain and hunt the extra raptors. No replacement can occur, nor may an additional non-exotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

Section 8. Reports. By July 31 of each year, falconry and non-hunting raptor permittees shall report to the department:

(1) A listing of all raptors in possession on June 30 of the year in which the report is filed, by species, year hatched, and marker number. The sex (if known) and date and where or from whom acquired shall be reported for each raptor used for falconry anytime during the report period;

(2) A listing of all raptors possessed or acquired since the previous annual report, but no longer possessed, by species, marker number, sex (if known), age (if known), date acquired and where or from whom acquired. This report must also indicate whether the bird died, escaped or was released, and when, or if it was transferred, when and to whom; and

(3) An estimate of days hunted, and wild and domestic quarry taken by falconry.

Section 9. Transferring, Transporting, Temporary Care

and Feathers. (1) Trade or transfer. Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction. No raptor may be imported into the state of Kentucky unless accompanied by a transportation permit from the department and a veterinarian's certificate stating the wildlife is free of symptoms of communicable disease.

(2) Purchase, barter and sale. General and master class permittees may purchase, sell, or barter any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to Title 50 CFR, Subchapter B, Part 21.30, and banded with a numbered seamless marker issued or authorized by the U.S. Fish and Wildlife Service subject to the following conditions:

(a) Any permittee who buys from, sells to or trades with any person in the United States or a foreign country must meet the conditions specified in Title 50 CFR, 21.30 (d) (5).

(b) Falconry and raptor propagation permittees who sell raptors must have a commercial propagation permit.

(3) Temporary relocation of raptors. Another person may care for the birds of a permittee if written authorization from the permittee accompanies the birds when they are relocated; provided, that if the period of care will exceed thirty (30) days, the department shall be informed in writing by the permittee of this action within three (3) days of the relocation. This notification shall state who is caring for them, and approximately how many days they will be in the care of the second person.

(3) Feathers. Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping purposes.

(5) Exotic raptors must be marked with bands approved by the department.

Section 10. Release of Raptors. No person shall intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner. The marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department. A federal bird band must be affixed to a captive bred raptor intentionally released to the wild.

Section 11. Raptor Propagation. (1) No person shall breed or propagate raptors without obtaining the appropriate Kentucky pet and propagation permit and U.S. Fish and Wildlife Service raptor propagation permit. A commercial pet and propagation permit authorizes the propagation and/or sale of raptors. A non-commercial permit authorizes only propagation. Permittees must comply with all requirements of the U.S. Fish and Wildlife Service raptor propagation regulation, Title 50 CFR, Subchapter B, Part 21.30.

(2) Activities permitted by Title 50 CFR, Subchapter B, Part 21.30 are authorized in Kentucky except as noted in this regulation in Sections 11, 12, and 13.

Section 12. Propagation Applications, Records, and Reports. Copies of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in Title 50 CFR, Subchapter B, Part 21.30, must be submitted to the department on the same dates as required by the U.S. Fish and Wildlife Service.

Section 13. Eligible Species. Only peregrine falcons, gyrfalcons, red-tailed hawks, sparrow hawks, great-horned owls, Harris hawks, prairie falcons, all exotic species and certain other species approved at the discretion of the department may be certified for propagation and sale.

Section 14. Regulation 301 KAR 2:071, Falconry, is hereby repealed.

CARL E. KAYS, Commissioner
G. WENDELL COMBS, Secretary
DR. ROBERT C. WEBB, Chairman

APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 12, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 22, 1984 at 2 p.m. in the meeting room of the Kentucky Department of Fish and Wildlife Resources at No. 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing at least five days before the hearing: James S. Durell, Assistant Director, Wildlife Division, Department of Fish and Wildlife Resources, No. 1 Game Farm Road, Arnold Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are about eighty (80) falconers in Kentucky, but only about seventy (70) are active at any one (1) time.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct costs involve $12 for a falconry permit and/or $6 for a non-commercial propagation permit. Or, the permittee may choose to buy the commercial propagation permit ($30), which authorizes him to sell captive bred birds. Indirect cost would be for food for the raptors, facilities, equipment and travel for hunting and their exercise.

2. Continuing costs or savings: Expenses for facilities and equipment would not reoccur unless the falconer increased his hawks, or upgraded facilities. Other expenses would remain the same.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Captive bred raptors could be sold.

(b) Reporting and paperwork requirements: Falconers will continue to be responsible for reporting all raptors in their care, source of additional hawks, fate of those no longer in their care and quarry taken by falconry. Breeders would also be responsible for reporting eggs laid, eggs hatched, and fate of the young produced.

(2) Effects on the promulgating administrative body: Substantial time was required to develop this complex regulation. The Wildlife Division will maintain records on each bird and each falconer. These will include natal county or state, and a history of ownership.

(a) Direct and indirect costs or savings: Maintaining records, follow-up, efforts to get reports, processing applications and tabulating reports will be the primary costs. Administering tests and inspecting facilities occupy law enforcement time.

1. First year: Estimated cost: $4,000.

2. Additional factors increasing or decreasing

costs: Potential sale of captive bred raptors probably will attract more breeders, thereby increasing the workload by a small percentage factor.

(b) Reporting and paperwork requirements: Annual reports will be tabulated each year. The falconer and banding records will be kept up-to-date in division files, unless the computer can be repaired.

(3) Assessment of anticipated effect on state and local revenues: Falconers will spend money for materials to house or maintain their raptors, and for equipment and travel. The state will collect taxes on these, and sell permits for falconry and breeding. This will be a small volume of income.

(4) Assessment of alternative methods; reasons why alternatives were rejected: One alternative available was to reject the U.S. Fish and Wildlife Service regulation permitting sale of captive-bred raptors. This alternative was rejected because several sepecies of non-indigenous hawks can be propagated in captivity, for the benefit of those who are attracted to falconry. The peregrine falcon, a hawk which is endangered, may be produced for falconry and possible release or escape. Another alternative was to permit sale of all Kentucky raptors. Most species of hawks seem to be rare in Kentucky, and the Kentucky Ornithological Society objected to their being included in this program.

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering appears unnecessary on this regulation, because it only affects falconers.

DEPARTMENT OF AGRICULTURE

302 KAR 16:040. Correction of safety violations and right to re-inspection.

RELATES TO: KRS 247.232, 247.234, 247.236
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
NECESSITY AND FUNCTION: To further clarify the procedure for determining the nature and severity of safety violations.

Section 1. If an inspector finds a condition on a ride or attraction which does not comply with KRS 247.232 through 247.236 and regulations of the department, the inspector shall determine whether said violation is one that cannot be corrected immediately within the meaning of KRS 247.234. If the inspector determines that said violation cannot be corrected immediately the inspector shall issue a stop operation order prohibiting the operation of such ride, attraction or part thereof found to be in violation. The safety inspector and the owner or operator may by agreement establish a time limit when such violation is to be corrected. After the expiration of such time period the owner or operator of said ride or attraction must either correct such violation and certify in writing to the commissioner that such violation has been corrected or request a further determination by the commissioner of the nature and severity of the safety violation in question.

Section 2. If upon a subsequent inspection requested pursuant to Section 1 of this regulation it is determined that the safety violation that is the subject of the stop operation order is one that can be corrected immediately the commissioner shall not charge the owner or operator the fee required pursuant to KRS 247.234.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 3, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 24, 1984 at 1 p.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact in writing at least five days before the hearing is scheduled the following office: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Prebble

(1) Type and number of entities affected: Amusement ride companies operating in the Commonwealth of Kentucky

(a) Direct and indirect costs or savings to those affected:

1. First year:N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Will require the amusement companies to certify correction of safety violations on occasions

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Will require the Department to keep certification of corrections on file

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is the most feasible alternative for implementing the law

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation will apply evenly to all amusement companies affected.

DEPARTMENT OF AGRICULTURE

302 KAR 16:050. Licensing fee for amusement rides or attractions.

RELATES TO: KRS 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
NECESSITY AND FUNCTION: To establish procedure for payment of the permit fee required under KRS 247.234.

Section 1. The permit fee required pursuant to KRS 247.234 shall be due and payable on January 1, 1985 and on January 1 of each succeeding year thereafter.

Section 2. The permit fee for the period from July 13, 1984 to December 31, 1984 shall be twelve dollars and fifty cents ($12.50) for each ride or attraction operating in the state of Kentucky for that period.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 24, 1984 at 1 p.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact in writing at least five days before the hearing is scheduled the following office: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Prebble
(1) Type and number of entities affected: Amusement ride companies operating in the Commonwealth of Kentucky
(a) Direct and indirect costs or savings to those affected:
1. First year:N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the most feasible alternative.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. This regulation will apply evenly to all amusement companies affected.

DEPARTMENT OF AGRICULTURE

302 KAR 20:170. Movement of equine.

RELATES TO: KRS 257.020
PURSUANT TO: KRS 257.030
NECESSITY AND FUNCTION: To provide guidelines for the movement of horses affected by equine viral arteritis.

Section 1. For purposes of this regulation: (1) "Infected farm" shall mean those premises which have been diagnosed as having horses infected with equine viral arteritis.
(2) "Exposed farm" shall mean those farms having mares bred on infected farms or farms where epidemiological studies have indicated possible infection.
(3) "EVA" shall mean equine viral arteritis.

Section 2. Horses on infected farms may move from the premises no earlier than thirty (30) days following date the last clinical symptom of EVA was diagnosed on the infected farm. In no event shall horses on infected farms be moved until an individual farm evaluation has been conducted and authorization for such movement has been obtained from the chief livestock sanitary official.

Section 3. Horses on exposed farms may move under the following conditions: (1) Horses vaccinated against EVA located on exposed farms shall be moved not less than thirty (30) days following the date which the horse was last bred.
(2) Nonvaccinated horses bred to an infected stallion shall not be moved unless negative to a blood test for EVA taken at least twenty-one (21) days after last breeding.

Section 4. Animals not exposed, infected or under study by the chief livestock sanitary official may move without further restriction.

Section 5. If further cases of EVA are discovered the chief livestock sanitary official may take action as is reasonably necessary for the prevention and/or control of EVA in the Commonwealth of Kentucky. The actions of the chief livestock sanitary official shall be based on research and clinical data available to him at the time such action is taken.

Section 6. Thoroughbred breeding may commence on individual farms and for specific horses by requesting approval for such horses from the chief livestock sanitary official. Such requests and approval shall be made in writing.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 12, 1984 at 3:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 24, 1984 at 3 p.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact in writing at least five days before the hearing is scheduled the following office: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. D. Wolf
(1) Type and number of entities affected: Kentucky equine industry.
(a) Direct and indirect costs or savings to those affected:
1. First year:N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Accurate records of infected or exposed animals and records concerning breeding
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Accurate

records of infected or exposed animals and records concerning breeding

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is the most feasible alternative considered.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation will apply to all the equine industry.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13A.210, 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promulgate regulations to establish standards for the generation of hazardous wastes. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes a uniform hazardous waste manifest and the Kentucky instructions for each form.

Section 1. Applicability. This regulation prescribes the manifest forms and the instructions which are required by the cabinet in accordance with the provisions of 401 KAR 32:020 and 401 KAR 32:050. When a generator or a hazardous waste site or facility prints copies of these forms, the following two (2) sentences may be printed on the top of the first page of the manifest form:

THE INFORMATION IN THE SHADED AREAS—D, F, H, I AND K—IS REQUIRED BY KENTUCKY LAW.

IN THE EVENT OF A SPILL INSIDE KENTUCKY, CALL (502) 564-2380 WITHIN TWO (2) HOURS OF THE SPILL.

When a generator or a hazardous waste site or facility prints copies of these forms, the following sentence may be printed on the top of the continuation sheet(s):

THE INFORMATION IN THE SHADED AREAS—O, Q, R AND T—IS REQUIRED BY KENTUCKY LAW.

Section 2. Manifest Form. The first page of the manifest form shall be as contained in Appendix A of this regulation.

Section 3. Kentucky Instructions for First Page of the Manifest Form. Read all instructions before completing this form.

This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.

KENTUCKY REGULATIONS REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES TO USE THIS FIRST PAGE OF THE FORM AND, IF NECESSARY, THE CONTINUATION SHEET(S).

KENTUCKY REGULATIONS ALSO REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES TO COMPLETE THE FOLLOWING INFORMATION:

GENERATORS

Item 1. Generator's U.S. EPA ID Number—Manifest Document Number: Enter the generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this Manifest (e.g., 00001) by the generator.

Item 2. Page 1 of _____. Enter the total number of pages used to complete this Manifest, i.e., the first page plus the number of Continuation Sheets, if any.

Item 3. Generator's Name and Mailing Address. Enter the name and mailing address of the generator. The address should be the location that will manage the returned Manifest forms.

Item 4. Generator's Phone Number. Enter a telephone number where an authorized agent of the generator may be reached in the event of an emergency.

Item 5. Transporter 1 Company Name. Enter the company name of the first transporter who will transport the waste.

Item 6. U.S. EPA ID Number. Enter the U.S. EPA twelve digit identification number of the first transporter identified in Item 5.

Item 7. Transporter 2 Company Name. If applicable, enter the company name of the second transporter who will transport the waste. If more than two transporters are used to transport the waste, use a Continuation Sheet(s) and list the transporters in the order they will be transporting the waste.

Item 8. U.S. EPA ID Number. If applicable, enter the U.S. EPA twelve digit identification number of the second transporter identified in Item 7.

NOTE: If more than two transporters are used, enter each additional transporter's company name and U.S. EPA twelve digit identification number in Items 24-27 on the Continuation Sheet. Each Continuation Sheet has space to record two additional transporters. Every transporter used between the generator and the designated facility must be listed.

Item 9. Designated Facility Name and Site Address. Enter the company name and site address of the facility designated to receive the waste listed on this Manifest. The address must be the site address, which may differ from the company mailing address.

Item 10. U.S. EPA ID Number. Enter the U.S. EPA twelve digit identification number of the designated facility identified in Item 9.

Item 11. U.S. DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number (Un/NA)). Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (Un/NA) for each waste as identified in 49 CFR Parts 171 through 177.

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the Continuation Sheet.

Item 12. Containers (No. and Type). Enter the number of containers for each waste and the appropriate abbreviation from Table 1 (below) for the type of container.

Table I—Types of Containers

DM = Metal drums, barrels, kegs
DW = Wooden drums, barrels kegs
DF = Fiberborad or plastic drums, barrels, kegs
TP = Tanks portable
TT = Cargo tanks (tank trucks)
TC = Tank cars
DT = Dump truck
CY = Cylinders
CM = Metal boxes, cartons, cases (including roll-offs)
CW = Wooden boxes, cartons, cases
CF = Fiber or plastic boxes, cartons, cases
BA = Burlap, cloth, paper or plastic bags

Item 13. Total Quantity. Enter the total quantity of waste described on each line.

Item 14. Unit (Wt./Vol.). Enter the appropriate abbreviation from Table II (below) for the unit of measure.

Table II—Units of Measure

G = Gallons (liquids only)
P = Pounds
T = Tons (2000 lbs)
Y = Cubic yards
L = Liters (liquids only)
K = Kilograms
M = Metric tons (1000 kg)
N = Cubic meters

Item 15. Special Handling Instructions and Additional Information. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. States may not require additional, new, or different information in this space. For international shipments, generators must enter in this space the point of departure (City and State) for those shipments destined for treatment, storage, or disposal outside the jurisdiction of the United States.

Item 16. Generator's Certification. The generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space below.

NOTE: All of the above information except the handwritten signature required in Item 16 may be preprinted.

TRANSPORTERS

Item 17. Transporter 1 Acknowledgement of Receipt of Materials. Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt..

Item 18. Transporter 2 Acknowledgement of Receipt of Materials. Enter, if applicable, the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

NOTE: International Shipments—Transporter Responsibilities.

Exports—Transporters must sign and enter the date the waste left the United States in Item 15 on the first page of the manifest form.

Imports—Shipments of hazardous waste regulated by RCRA and transported into the United States from another country must upon entry be accompanied by the U.S. EPA Uniform Hazardous Waste Manifest. Transporters who transport hazardous waste into the United States from another country are responsible for completing the Manifest (Section 1(3) of 401 KAR 32:010).

OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 19. Discrepancy Indication Space. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any significant discrepancy between the waste described on the Manifest and waste actually received at the facility.

Owners and operators of facilities located in Kentucky who cannot resolve significant discrepancies within 15 days of receiving the waste must submit to the Cabinet (Division of Waste Management, 18 Reilly Road, Frankfort, Ky. 40601) a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Section 3 of 401 KAR 34:050 and Section 3 of 401 KAR 35:050).

Owners and operators of facilities located outside of Kentucky who cannot resolve significant discrepancies must submit to their Regional Administrator (if the U.S. EPA administers the hazardous waste management program), or to their State agency (if the State administers the hazardous waste management program), a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it.

Item 20. Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19. Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

SHADED AREAS

Kentucky requires generators and owners or operators of treatment, storage, or disposal facilities to complete Items D, F, H, I and K as part of Kentucky's manifest reporting requirements.

Item D. Transporter's Phone. Enter the telephone number of the transporter identified in Item 5.

Item F. Transporter's Phone. Enter the telephone number of the transporter identified in Item 7.

Item H. Facility's Phone. Enter the telephone number of the facility identified in Item 9.

Item I. Waste Number. Enter the EPA hazardous waste number for each waste.

Item K. Handling Codes for Waste Listed Above. Enter the appropriate handling code(s) for the wastes listed in Item 11. Table III contains the handling codes.

Table III—Handling Codes for Treatment, Storage, and Disposal Methods
(Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.)

1.	Storage		
S01	Container (barrel, drum, etc.)	S03	Waste pile
S02	Tank	S04	Surface impoundment
		S05	Other (specify)
2.	Treatment		
(a)	Thermal Treatment		
T06	Liquid injection incinerator	T13	Wet air oxidation
T07	Rotary kiln incinerator	T14	Calcination
T08	Fluidized bed incinerator	T15	Microwave discharge
T09	Multiple hearth incinerator	T16	Cement kiln
T10	Infrared furnace incinerator	T17	Lime kiln
T11	Molten salt destructor	T18	Other (specify)
T12	Pyrolysis		
(b)	Chemical Treatment		
T19	Absorption mound	T27	Cyanide destruction
T20	Absorption field	T28	Degradation
T21	Chemical fixation	T29	Detoxification
T22	Chemical oxidation	T30	Ion exchange
T23	Chemical precipitation	T31	Neutralization
T24	Chemical reduction	T32	Ozonation
T25	Chlorination	T33	Photolysis
T26	Chlorinolysis	T34	Other (specify)
(c)	Physical Treatment		
	(1) Separation of components		
T35	Centrifugation	T42	Flotation
T36	Clarification	T43	Foaming
T37	Coagulation	T44	Sedimentation
T38	Decanting	T45	Thickening
T39	Encapsulation	T46	Ultrafiltration
T40	Filtration	T47	Other (specify)
T41	Flocculation		
	(2) Removal of Specific Components		
T48	Absorption-molecular sieve	T58	High gradient magnetic separation
T49	Activated carbon		
T50	Blending	T59	Leaching
T51	Catalysis	T60	Liquid ion exchange
T52	Crystallization	T61	Liquid-liquid extraction
T53	Dialysis	T62	Reverse osmosis
T54	Distillation	T63	Solvent recovery
T55	Electrodialysis	T64	Stripping
T56	Electrolysis	T65	Sand filter
T57	Evaporation	T66	Other (specify)
(d)	Biological treatment		
T67	Activated sludge	T73	Spray irrigation
T68	Aerobic lagoon	T74	Thickening filter
T69	Aerobic tank	T75	Trickling filter
T70	Anaerobic lagoon	T76	Waste stabilization pond
T71	Composting	T77	Other (specify)
T72	Septic tank		
3.	Disposal		
D80	Underground injection	D84	Surface impoundment (to be closed as a landfill)
D81	Landfill		
D82	Land treatment	D85	Other (specify)
D83	Ocean disposal		

Section 4. Continuation Sheet. When all the required information cannot be entered on the first page of the manifest form, the generator shall use one (1) or more continuation sheets. The continuation sheet(s) of the manifest form shall be as contained in Appendix B of this regulation.

Section 5. Instructions for the Continuation Sheet.

Read all instructions before completing this form.

This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.

The form must be used as a continuation sheet to the first page of the manifest if:

• More than two transporters are to be used to transport the waste:

•More space is requied for the U.S. DOT description and related information in Item 11 of U.S. DOT description and related information in Item 11 of the first page of the manifest form.

Kentucky regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the Uniform Hazardous Waste Manifest (first page) and, if necessary, this Continuation Sheet.

GENERATORS

Item 21. Generator's U.S. EPA ID Number—Manifest Document Number. Enter the generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this Manifest (e.g., 00001) as it appears in Item 1 on the first page of the Manifest.

Item 22. Page _____. Enter the page number of this Continuation Sheet.

Item 23. Generator's Name. Enter the generator's name as it appears in Item 3 on the first page of the Manifest.

Item 24. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Each Continuation Sheet will record the names of two additional transporters.

Item 25. U.S. EPA ID Number. Enter the U.S. EPA twelve digit identification number of the transporter described in Item 24.

Item 26. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet will record the names of two additional transporters.

Item 27. U.S. EPA ID Number. Enter the U.S. EPA twelve digit identification number of the transporter of the transporter described in Item 26.

Item 28. U.S. DOT Description including Proper Shipping Name, Hazardous Waste Class, and ID Number (UN/NA). Refer to Item 11.

Item 29. Containers (No. and Type). Refer to Item 12.

Item 30. Total Quantity. Refer to Item 13.

Item 31. Unit (Wt./Vol.). Refer to Item 14.

Item 32. Special Handling Instructions. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. States are not authorized to require additional, new or different information in this space.

TRANSPORTERS

Item 33. Transporter _____ Acknowlegement of Receipt of Materials. Enter the same number of the Transporter as identified in Item 24. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 24. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter _____ Acknowledgement of Receipt of Materials. Enter the same number as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Item 35. Discrepancy Indication Space. Refer to Item 19.

SHADED AREAS

Kentucky does require generators and owners or operators of treatment, storage, or disposal facilities to complete Items O, Q, R and T as part of Kentucky's manifest reporting requirements.

Item O. Transporter's Phone. Enter the telephone number of the transporter identified in Item 24.

Item Q. Tranporter's Phone. Enter the telephone number of the transporter identified in Item 26.

Item R. Waste Number. Enter the EPA hazardous waste number for each waste.

Item T. Handling Codes for Waste Listed Above. Enter the appropriate handling code(s) for the wastes listed in Item 28. Table III under Item K contains the handling codes.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 10:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled in the Capital Plaza Tower Auditorium on August 22, 1984 at 10 a.m. EDT. Persons interested in attending this hearing shall contact in writing by August 17, 1984 the following office: Mark Caines, Manager, Program Development Branch, Division of Waste Management, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mark Caines, Manager, Program Development Branch, Division of Waste Management

(1) Type and number of entities affected: This regulation affects all hazardous waste generators, transporters, and treatment, storage, and disposal facilities in Kentucky. There are 226 generators; 101 transporters; 83 treatment, storage and disposal facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be an initial cost to the generator for the cost of the uniform hazardous waste manifest forms. Transporters and facilities will not be required to purchase the forms, but will be required to use them in their daily operation. NOTE: The Federal Government has the same requirement for the use of the form. Thus, the Kentucky regulation will not be an increase from the Federal costs.

2. Continuing costs or savings: There will be a continuing cost to the generator to reorder the forms.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable.

(b) Reporting and paperwork requirements: The generator is required to report to the Division any exceptions or discrepancies to the manifest form when it is returned to the generator from the receiving facility. The transporter is required to contact an emergency phone number within two (2) hours of a spill of a shipment of hazardous waste. NOTE: This requirement is identifical to Federal reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Not applicable

2. Continuing costs or savings: Not applicable

3. Additional factors increasing or decreasing costs: Not applicable

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from the promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative (a) Less Stringent/More Stringent: Kentucky is required to be no less stringent than the Federal program, therefore, the uniform manifest forms must be adopted. To require additional data that is not contained on the forms would be burdensome on the regulated community. Alternative (b) Present Proposal: The proposal was adopted equivalent to the Federal program.

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

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes.

(See Appendix A on following page)

APPENDIX A TO 401 KAR 32:100

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. | Manifest Document No.

2. Page 1 of | Information in the shaded areas is not required by Federal law.

GENERATOR

3. Generator's Name and Mailing Address

4. Generator's Phone ( )

A. State Manifest Document Number

B. State Generator's ID

5. Transporter 1 Company Name | 6. US EPA ID Number

C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name | 8. US EPA ID Number

E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address | 10. US EPA ID Number

G. State Facility's ID

H. Facility's Phone

11. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a.					
b.					
c.					
d.					

J. Additional Descriptions for Materials Listed Above

K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations.

Printed/Typed Name | Signature | Date (Month Day Year)

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Date (Month Day Year)

18. Transporter 2 Acknowledgement or Receipt of Materials

Printed/Typed Name | Signature | Date (Month Day Year)

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Date (Month Day Year)

Please print or type (Form designed for use on elite (12-pitch) typewriter.)

UNIFORM HAZARDOUS WASTE MANIFEST
(Continuation Sheet)

21. Generator's US EPA ID No. | Manifest Document No. | 22. Page | Information in the shaded areas is not required by Federal law.

23. Generator's Name

L. State Manifest Document Number

M. State Generator's ID

24. Transporter ____ Company Name | 25. US EPA ID Number

N. State Transporter's ID

O. Transporter's Phone

26. Transporter ____ Company Name | 27. US EPA ID Number

P. State Transporter's ID

Q. Transporter's Phone

GENERATOR

28. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	29. Containers No.	Type	30. Total Quantity	31. Unit Wt. Vol	R. Waste No.
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					

S. Additional Descriptions for Materials Listed Above

T. Handling Codes for Wastes Listed Above

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

34. Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

FACILITY

35. Discrepancy Indication Space

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 10:035. Procedures, criteria and hearing requirements for cancellation of surety bonds after notice of non-compliance issued for failure to maintain contemporaneous reclamation.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.068, 350.151, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part provides authority for the cabinet to approve the cancellation of surety bonds upon notice by the surety when a notice of non-compliance is issued for failure to maintain contemporaneous reclamation. This regulation specifies the procedures and criteria for surety bond cancellation. This regulation also sets forth certain notice and hearing requirements relating to surety bond cancellation.

Section 1. Procedures for Request for and Notice of Surety Bond Cancellation. (1) Notice of intent to cancel.

(a) After the issuance, on or after July 13, 1984, of a notice of non-compliance for failure to maintain contemporaneous reclamation, the surety obligated on the performance bond for the permit or any increment thereof may send notice to the insured and to the department, of its intent to request cancellation of bond coverage on any area disturbed after thirty (30) days from the effective date of the surety's notice of intent to cancel, if the violation is not abated.

(b) The notice of intent to cancel shall be sent by certified mail, return receipt requested, to the insured, and a copy to the Director of the Division of Field Services, of the department. The effective date of the notice of intent to cancel shall be the date on which it is received by the insured.

(c) The notice of intent to cancel shall be signed by an officer or director of the surety company and contain at a minimum the following:

1. Name of permittee;
2. Permit number and increment number, if applicable;
3. Name of surety;
4. Bond number and amount;
5. Date of issuance of notice of non-compliance and non-compliance number; and
6. Date of notice of intent to cancel.

(2) Notice of cancellation.

(a) If the surety elects to cancel pursuant to its notice of intent to cancel, the surety shall send a notice of cancellation to the insured by certified mail, return receipt requested. A copy of said notice shall also be sent to the Director of the Division of Field Services by certified mail, return receipt requested.

(b) The notice of cancellation shall be on a form specified by the cabinet and shall be sworn to by an officer or director of the surety, notarized and contain at a minimum the following:

1. Name of permittee and permit number;
2. Increment number, if applicable;
3. Name of surety and bond number;
4. Date of issuance of notice of non-compliance and non-compliance number;
5. Date the notice of intent to cancel was received by permittee;
6. Date of notice of cancellation;
7. A statement that the violation has not been abated within thirty (30) days of the effective date of the notice of intent to cancel;
8. A statement that the surety acknowledges that it will not be relieved of its liability for areas distrubed prior to the department's approval of cancellation; and
9. A request for the cabinet to approve the notice of cancellation.

(c) The notice of cancellation shall become effective upon the cabinet's approval.

(3) Cabinet approval of cancellation. Within thirty (30) days of receipt of the notice of cancellation, the cabinet shall approve the surety's notice of cancellation in writing, only if the following conditions exist:

(a) The violation has not been abated by the permittee; and

(b) The surety has complied with the notice requirements of subsection (1) and (2) of this section; and

(c) The cabinet has:

1. Revoked the permit by order of the commissioner of the department; or
2. Deleted the area subject to the cancellation by order of the commissioner of the department; or
3. Accepted and approved a substitute bond submitted by the permittee.

Section 2. Procedures for Permit Revocation or Deletion of the Areas Subject to Cancellation. The cabinet shall by order delete the areas subject to bond cancellation or revoke the permit for the entire permit area within thirty (30) days from receipt of the surety's notice of cancellation, without prior hearing, unless an acceptable substitute bond has been submitted to the cabinet.

(1) The order shall be issued by the commissioner of the department, without prior hearing, based upon information available to the cabinet and the surety's notice of cancellation.

(2) The permittee may request a hearing on the order of the commissioner pursuant to KRS 224.081(2).

(a) A hearing requested pursuant to KRS 224.081(2) shall be requested within thirty (30) days of entry of the order of the commissioner.

(b) The order of the commissioner shall be affirmed unless the permittee can affirmatively establish that bond coverage was not cancelled and the violation was abated at the time of entry of the commissioner's order, or that substitute bond was approved by the cabinet.

(c) Within thirty (30) days after entry of the order of the commissioner, the order may be rescinded if the permittee can demonstrate that a substitute bond has been accepted and approved by the cabinet and the violations have been abated.

Section 3. Procedures for Bond Release or Forfeiture after Approval of Cancellation. (1) The cabinet shall not release any portion of a bond for a permit area or increment thereof, including but not limited to undisturbed acreage, after cancellation, unless and until all disturbed areas on the permit or increment have been reclaimed to the standards set forth in KRS Chapter 350 and the regulations promulgated pursuant thereto, or substitute bond has been filed and approved by the cabinet and the substitute surety has expressly assumed liability for all disturbed areas of the permit or increment.

(2) In the event of bond forfeiture the entire bond held by the cabinet shall be forfeited upon order of the secretary

pursuant to KRS Chapter 350 and the regulations pursuant thereto.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 13, 1984 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 28, 1984, at 10 a.m. in the Capital Plaza Tower auditorium. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: The two types of entities affected by this regulation are the coal mining industry and sureties providing performance bonds for the coal industry. The number of entities affected is unknown because the regulation only has an impact when the mining operation fails to meet contemporaeous reclamation requirements and the surety elects to cancel bond coverage as a result.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be additional costs incurred by mining operations that have their surety bonds cancelled due to the increased costs of obtaining a substitute bond or having the permit revoked. There will be savings incurred by the surety companies due to their ability to minimize their liabilities.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are new paperwork requirements established in order to implement this provision. Sureties will have to file a notice of intent to cancel and a notice of cancellation. There will be additional paperwork required of the industry in order to submit substitute bonds.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Depending on the number of requests for cancellation of bond coverage received by the cabinet, there will be an increase in the workload of the cabinet to review and process the requests and to ensure that the operations affected have substituted bond or to delete areas from the permit or to revoke the permit.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be a substantial increase in the paperwork for the cabinet to implement this regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered because this bond cancellation provision was established by the 1984 General Assembly by amendment to KRS Chapter 350.

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

(a) Necessity of proposed regulation if in conflict: Not applicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(6) Any additional information or comments: This provision will encourage mining operations to maintain contemporaneous reclamation in order to avoid having their surety bonds cancelled.

Tiering:
Was tiering applied? No. Tiering is not applicable to this regulation.

Fiscal Note: A fiscal note is not required for this regulation because it will have no impact on local government.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:015. Special overweight/overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort.

RELATES TO: KRS 189.270, Senate Bill 107
PURSUANT TO: KRS 174.080, Senate Bill 107
NECESSITY AND FUNCTION: A new section of KRS Chapter 189 was created by Senate Bill 107 passed by the 1984 General Assembly to allow for certain proposed overdimensional permits to be issued at the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort. This regulation establishes procedures necessary to issue such permits.

Section 1. (1) The twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort may issue special overdimensional permits for operators of equipment used for soil conservation purposes, residential construction purposes, and public utility service purposes and other specialized equipment, such as oil well and mine equipment and truck cranes and loaders.

(2) Such special permits are issued only to vehicles which are properly licensed in Kentucky, if the vehicles are required to be licensed in Kentucky.

(3) The permit shall be issued for a movement of a specific vehicle, load, machine, or piece of equipment. The load, machine, or piece of equipment must be clearly identified or described (for example, D-8 dozer).

Section 2. Height. There is no set height limit except as determined by underpasses and bridges; however, fifteen (15) feet in most cases is the highest practical for moves over Kentucky highways.

Section 3. Weight. (1) No gross or axle overweight will be permitted on combination units of less than five (5) axles nor on a single unit except off road equipment such as scraper, mobile cranes or other self propelled units and in no case may axle weight exceed 600 lbs. x aggregate tire rim inch.

(2) Kentucky licensed vehicles will not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(3) Following are axle weights and gross weights which may be permitted with use of four (4) wheels and tires per axle at least 10.00 rim inch size:

Single axle—24,000
Tandem axle—48,000 (minimum 42' spacing)
Tri axle—60,000 (minimum 42'spacing between axles)
Five (5) axle combination units are not to exceed 96,000 lbs. gross.
Six (6) axle combination units are not to exceed 120,000 lbs gross.

(4) Since bridge capacity is the controlling factor in most instances, the above-noted maximum weights may not be permitted unless all bridges involved are of sufficient capacity to accommodate the load. No permit shall be issued by a district office of the Department of Highways, if the gross load exceeds 120,000 lbs.

Section 4. Any blade or bucket attached to the equipment which exceeds fourteen (14) feet in width must be removed for highway movement. A blade which has been removed may be moved on the same truck without being considered a divisible load.

Section 5. The permit will be valid for ten (10) days and need not be limited to a single movement. The fee for the issuance of the permit will be thirty (30) dollars. The ten (10) day permit will be issued for movements of loads over twelve (12) feet wide and shall not exceed fourteen (14) feet wide. Applications for an annual permit for loads twelve (12) feet wide or less can be made to the Division of Motor Carriers, Qualifications/Permits Branch, Overweight/ Overdimensional Permit Section. Frankfort, Kentucky. No other overweight/overdimensional permit may be issued by district offices of the Department of Highways.

Section 6. One (1) lead escort shall accompany equipment on two (2) lane highways if the blade or bucket extends over the bed of the transporting vehicle if the width of the equipment exceeds ten (10) feet, six (6) inches. One (1) lead escort vehicle and one (1) following escort vehicle shall accompany equipment on two (2) lane highways if the width of the equipment or load exceeds twelve (12) feet. Any vehicle whose slow rate of speed due to the nature of its load or due to the nature of the vehicle itself poses a hazard to the traveling public, must have one (1) following escort vehicle. Red flags twelve (12) inches by twelve (12) inches square must be displayed on both side front bumpers of the lead escort vehicle.

Section 7. (1) Permits are valid during daylight hours only from Monday thru Saturday noon, except for national holidays. In connection with these holidays, travel is not permitted from noon the preceding day until daylight of the next permissible day. The term "daylight hours" means the period one-half (1/2) hour before sunrise and one-half (1/2) hour after sunset.

(2) The special permit will only be issued for movements within the county in which the vehicle is based or the applicant maintains headquarters and movement into an adjoining county and return to headquarters.

Section 8. Single trip permits that exceed fourteen (14) feet wide or where height, weight, or length exceeds the limits set forth in this section must be applied for with the Division of Motor Carriers, Qualifications/Permits Branch. These permits will be considered on an individual trip basis and with specific routing.

Section 9. Nothing herein shall prohibit the issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or may be detrimental to public safety.

PATRICIA K. FOLEY, Acting Commissioner
FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 30, 1984, at 1:30 p.m. in the 4th floor conference room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 25, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore
(1) Type and number of entities affected: Departments of Highways and Vehicle Regulation
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements would be imposed upon each district office of the Department of Highways.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Implements legislative requirement that certain od/ow permits be issued through district highway offices. This is a new duty for these offices.
(3) Assessment of anticipated effect on state and local revenues: No change
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative to express legislative mandate
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

LOCAL MANDATE IMPACT STATEMENT

Senate Bill 107
SUBJECT/TITLE: Overweight/overdimensional permits issued at district offices of the Department of Highways and by Division of Motor Carriers, Department of Vehicle Regulation.
SPONSOR: Division of Motor Carriers, Department of Vehicle Regulation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No.
TYPE OF MANDATE: Enactment of Senate Bill 107
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:

FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Implement Senate Bill 107 by establishing procedures and method of issuance of certain special overweight/overdimensional permits through both the district offices of the Department of Highways and by the Division of Motor Carriers, Dept. of Vehicle Regulation; and establishment of uniform standards for the issuance of such permits.
PROVISION/MECHANICS: Establish uniform standards, practices and procedures for the issuance of special restricted overweight/overdimensional permits authorized by Senate Bill 107 through both respective district offices of Department of Highways and the Division of Motor Carriers, Dept. of Vehicle Regulation.
FISCAL EXPLANATION: Permit fee revenues will remain unchanged. Place and manner of permit issuance is only involved.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:130. Kentucky highway motor fuel surtax and weight distance tax exemption.

RELATES TO: KRS 138.660, House Bill 25 of the 1984 General Assembly
PURSUANT TO: KRS 138.725, 174.080
NECESSITY AND FUNCTION: KRS 186.057 (Section 6 of House Bill 25, enacted by the 1984 regular session of the General Assembly, and effective July 13, 1984) provides that vehicles primarily transporting coal may be specially registered, and that the operation of such specially registered vehicles will be exempted from the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2), (3). This regulation provides for the dissemination of this information to Kentucky highway use taxpayers, and further provides for highway use taxpayers eligible for these tax exemptions to notify the Department of Vehicle Regulation of the fact of their eligibility for such tax exemptions. This notification will enable the Department of Vehicle Regulation to properly qualify this class of taxpayers for the reporting and payment of their normal highway use motor fuel taxes, and to be provided with the appropriate tax reporting forms. It is essential that this information be forwarded and received and that the Division of Motor Carriers be informed as to the identity of those taxpayers proposing to claim such tax exemptions, in order for such taxpayers to be properly qualified and to receive the proper tax forms for the quarter ending September 30, 1984.

Section 1. The Department of Vehicle Regulation shall notify that class of highway use taxpayers which may be entitled to exemption from the reporting and payment of the motor fuel surtax and the weight distance tax imposed by KRS 138.660(2) and (3) of the fact of and information relating to their potential entitlement. Such taxpayers shall be notified at the time they are forwarded their regular tax reporting forms for the quarter ending June 30, 1984.

Section 2. (1) Those taxpayers who intend to claim the weight distance tax and motor fuel surtax exemptions authorized by KRS 186.057 are required to affirmatively complete and file with the department an appropriate application form, evidencing the intent of affected taxpayers to claim such tax exemption. A copy of the appropriate forms and instructions are available from the Department of Vehicle Regulation, Division of Motor Carriers, P. O. Box 2007, Frankfort, Kentucky 40602.

(2) Completed tax exemption application forms must be received by the department prior to October 1, 1984, if applicable to any part of the quarter ending September 30, 1984.

FLOYD G. POORE, Secretary
JOHN A. STEPHENSON, Commissioner
APPROVED BY AGENCY: June 21, 1984
FILED WITH LRC: June 21, 1984 at 3:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled at 2 p.m. on August 22, 1984 at the Fourth Floor Hearing Room, State Office Building, Corner of Clinton and High Streets, Frankfort, Kentucky. By August 17, 1984 persons interested in attending this hearing must in writing contact: Larry E. Moore, Assistant to the Secretary, Tenth Floor, State Office Building, Frankfort, KY 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore, Assistant to the Secretary
(1) Type and number of entities affected: NONE
(a) Direct and indirect costs or savings to those affected: NONE
1. First year: NONE
2. Continuing costs or savings: NONE
3. Additional factors increasing or decreasing costs (note any effects upon competition): NONE
(b) Reporting and paperwork requirements: Expedite tax exemption eligibility.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: $3,000-$3,400 postage expenses
1. First year: $3,000-$3,400 postage expenses
2. Continuing costs or savings: NONE
3. Additional factors increasing or decreasing costs: Elmination of extra employee time, mailroom processing and computer runs.
(b) Reporting and paperwork requirements: Eliminate duplicate mailing to approximately 10,000-12,000 taxpayers.
(3) Assessment of anticipated effect on state and local revenues: Save state expenses as above-noted; no effect on local revenues or expenses.
(4) Assessment of alternative methods; reasons why alternatives were rejected: To save postage expenses, employee time, and computer and mailroom processing in order to save expenses which would occur if duplicate mailing and processing are required.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: NONE
(a) Necessity of proposed regulation if in conflict: NONE
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NONE
(6) Any additional information or comments: NONE

Tiering:
Was tiering applied? NO. No applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

(84) BR No. 322/HCS
Regulation No.: 601 KAR 1:130
SUBJECT/TITLE: Kentucky Highway Use Tax Exemption

SPONSOR: Division of Motor Carriers, Department of Vehicle Regulation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: NONE
LEVEL(S) OF IMPACT: NONE
BUDGET UNIT(S) IMPACT: NONE
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Implementation of coal truck tax exemption.
PROVISION/MECHANICS: Provide for forwarding of proper tax forms
FISCAL EXPLANATION: N/A

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:011. Handicapped license plates.

RELATES TO: KRS 186.042
PURSUANT TO: KRS 186.042
NECESSITY AND FUNCTION: KRS 186.042 as amended by the 1984 General Assembly empowers the Transportation Cabinet to adopt rules and regulations to implement the provisions as set forth therein for the issuance of handicapped license plates. This regulation implements the provisions of KRS 186.042.

Section 1. (1) Any individual renewing a handicapped license plate which will expire December 31, 1984, shall receive a decal effective for the period of January 1, 1985, through July 31, 1985, for a state fee of $6.71 and a clerk's fee of $1.00.

(2) Any person who purchases a handicapped plate for the first time after July 13, 1984, will be sold a decal expiring July 31, 1985, for a state fee of $11.50 and a clerk's fee of $1.00.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 23, 1984, at 9 a.m. in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 18, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Trager
(1) Type and number of entities affected: County Clerks, Applicants for Handicapped Plates
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

Senate Bill 94
SUBJECT/TITLE: Handicapped license plates.
SPONSOR:
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No.
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: To accommodate new expiration date on handicapped plates by a system of proration of fees.
PROVISION/MECHANICS:
FISCAL EXPLANATION: Since fees are prorated, same amount of revenue collected as previously.
PREPARER: John Trager

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:040. Motor vehicle accident prevention course.

RELATES TO: KRS 304.13-063
PURSUANT TO: KRS 304.13-063(5)
NECESSITY AND FUNCTION: KRS 304.13-063(1) requires that standards for a "motor vehicle accident prevention course" be set by the Transportation Cabinet, and furthermore, requires that such course include a minimum number of hours of either classroom and/or field driving instruction. This regulation is necessary to set standards for the motor vehicle accident prevention course.

Section 1. Definition. "Course" or "motor vehicle accident prevention course" means a course, approved by the Transportation Cabinet pursuant to KRS 304.13-063, that shall be open to any licensed driver of this state who is fifty-five (55) years of age or older for the purpose of qualifying for an insurance premium reduction.

Section 2. No person shall offer, conduct or engage in the business of offering or conducting a motor vehicle accident prevention course pursuant to KRS 304.13-063 without obtaining the prior approval of the Transportation Cabinet pursuant to the provisions of this administrataive regulation. A person shall file an application for approval of a course with the Transportation Cabinet; and the application shall be on the form furnished by the Transporta-

tion Cabinet and shall contain the information required by the Transportation Cabinet. Said application forms can be obtained from the Transportation Cabinet, Division of Driver Licensing, State Office Building, 2nd Floor, Frankfort, Kentucky 40622.

Section 3. The completed application shall be accompanied by the following:

(1) A copy of the proposed motor vehicle prevention course materials, curriculum, and promotional documents;

(2) The name, address, and social security number of each instructor who shall conduct the course; and

(3) A copy of the manual and course materials for the instructor's preparation course.

Section 4. In the event the course application is approved, the course approval shall be valid for not more than a two (2) year period. Any person who has obtained approval for a course shall comply with the following requirements:

(1) Apply to the Transportation Cabinet for approval if there are any proposed additions or deletions to a previously approved course or its curriculum;

(2) Perform all necessary administrative functions in connection with the course;

(3) Obtain approval from the Transportation Cabinet of the form of the certificate which shall be issued upon course completion as specified in subsection (4) of this section;

(4) Provide each participant satisfactorily completing the course with an approved certificate of course completion;

(5) Maintain records which indicate the name, address, social security number and date of course of those individuals who have completed the course within the previous three (3) years;

(6) Provide and train instructors to conduct courses;

(7) Conduct the course in accordance with the description and curriculum approved by the Transportation Cabinet;

(8) Provide the Transportation Cabinet with a schedule of class dates, times, and locations; and

(9) Authorize and permit the Transportation Cabinet to audit the records of the approved course and to monitor and evaluate any and all portions of the course including but not limited to the classroom facility, field driving, the use of the instructional materials, the qualifications of instructors and the actual presentation of the course.

Section 5. No course shall be approved unless the course shall have a minimum of four (4) hours of classroom or field driving instruction; and the curriculum of the course shall at least include but shall not be limited to the following subject matters:

(1) Concept of accident preventability including a discussion of the magnitude of traffice accident problems;

(2) Techniques for defensive driving and handling critical situations, including but not limited to:

(a) Interpreting events that require evasive action;

(b) Determining the appropriate response to situations caused by mechanical failure of the motor vehicle;

(c) Determining risk factors created by a variety of psychological, social, and physical factors that can facilitate or inhibit the functions required in driving, including but not limited to:

1. The effects and compensatory measures concerning the relationships between alcohol, drugs, or medication and driving performances;

2. The negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performances; and

3. The age-related physical changes of drivers fifty-five (55) years of age and older.

(3) Kentucky traffic laws and regulations, vehicle dynamics, capabilities, limitations, and highway environmental factors including but not limited to:

(a) Traffic laws and regulations, such as signs, signals, and markings, right-of-way requirements, and speed;

(b) Vehicle capabilities, such as stopping distances and passing abilities; and

(c) Highway settings, operating environments and adverse conditions, including but not limited to conditions affected by illumination, obstructions, or the weather, such as snow, ice, or rain.

Section 6. The certified agency may charge a reasonable fee for the course. The Transportation Cabinet may require an audit by an independent firm of the fees collected and expenditure of those fees.

Section 7. Upon written notice the Transportation Cabinet may rescind and cancel the certification of approval of any agency conducting the course prior to the two (2) year time period established by Section 4 of this regulation for good cause, including but not limited to any of the following reasons:

(1) Deletions or additions have been made to the curriculum which have not been specifically approved by the Transportation Cabinet;

(2) The person or any instructor has failed to comply with any of the provisions of this regulation.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 12, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 10 a.m. in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bill Wilhoite or Larry Moore

(1) Type and number of entities affected: Unknown

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Instructors must submit qualifications, resumes and copy of course curriculum.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings:None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable

LOCAL MANDATE IMPACT STATEMENT

Senate Bill 65
SUBJECT/TITLE: Authority to regulate motor vehicle accident prevention course providers
SPONSOR:
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT: None
FISCAL SUMMARY:
MEASURE'S PURPOSE: To license motor vehicle accident prevention course providers.
PROVISION/MECHANICS: Must apply to the Transportation Cabinet for license
FISCAL EXPLANATION:
PREPARER: Bill Wilhoite

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:050. Alcohol Education or Treatment Program.

RELATES TO: KRS 186.560, 189A.040, 189A.070
PURSUANT TO: KRS 186.400, 186.560
NECESSITY AND FUNCTION: Senate Bill 20 allows a person convicted the first time of driving under the influence of alcohol or any substance which may impair their driving ability (DUI) to have the driver license revocation period shortened from six (6) months to thirty (30) days by successfully completing an alcohol or substance abuse program. KRS 189A.040 and 189A.070 allow the Transportation Cabinet to set standards for the course and curriculum of the driver improvement program or alcohol and substance abuse education or treatment program pursuant to KRS 186.560. This regulation is necessary to establish standards and criteria for such alcohol or substance abuse programs.

Section 1. Definition. "Education or treatment program" means a course, approved pursuant to KRS 186.560 and 189A.070 by the Transportation Cabinet that shall be open to any licensed driver of this state who has been convicted of a first offense of DUI.

Section 2. No person shall offer, conduct or engage in the business of offering or conducting an alcohol or substance abuse program pursuant to KRS 186.560 and 189A.070 without obtaining the prior approval of the Transportation Cabinet pursuant to the provisions of this administrataive regulation. A person shall file an application for approval of a course with the Transportation Cabinet; and the application shall be on the form furnished by the Transportation Cabinet and shall contain the information required by the Transportation Cabinet. Said application forms can be obtained from the Transportation Cabinet, Division of Driver Licensing, State Office Building, 2nd Floor, Frankfort, Kentucky 40622.

Section 3. The completed application shall be accompanied by the following:
(1) A copy of the proposed course materials, curriculum, and promotional documents;
(2) The name, address, and social security number of the instructors who shall conduct the course; and
(3) A copy of the manual and course materials for the instructor's preparation course.

Section 4. In the event the course application is approved, the course approval shall be valid until cancelled. Any person who has obtained approval for a course shall comply with the following requirements:
(1) Apply to the Transportation Cabinet for approval if there are any proposed additions or deletions to a previously approved course or its curriculum;
(2) Perform all necessary administrative functions in connection with the course;
(3) Obtain approval from the Transportation Cabinet of the form of the certificate to be issued upon course completion as specified in subsection (4) of this section;
(4) Provide each participant, satisfactorily completing the course, with an approved certificate of course completion;
(5) Maintain records which indicate the name, address, and social security number and the date of the course and if the course was satisfactorily completed for those individuals who have attended the course within the previous five (5) years;
(6) Provide and train instructors to conduct courses;
(7) Conduct the course in accordance with the description and curriculum approved by the Transportation Cabinet;
(8) Provide the Transportation Cabinet with a schedule of class dates, times, and locations; and
(9) Authorize and permit the Transportation Cabinet to audit the records of the approved course and to monitor and evaluate any and all portions of the course including but not limited to the classroom facility, the use of the instructional materials, and the actual presentation of the course, and qualification of instructors.

Section 5. No course shall be approved unless the course shall have a minimum of nine (9) hours of classroom instruction; and the curriculum of the course shall at least include but shall not be limited to the following subject matters:
(1) The alcohol offender in the Commonwealth of Kentucky;
(2) Recognizing the alcohol or substance abuse problem;
(3) Assuming the responsibility of dealing with the problem;
(4) Alternative approaches and support to resolving the problem;
(5) Personal strategy for sustaining commitment to the alcohol driver education program;
(6) Maximizing personal influence by working with potential offenders; and
(7) Determining risk factors created by a variety of psychological, social, and physical factors that can

facilitate or inhibit the functions required in driving, including but not limited to:

(a) The effects and compensatory measures concerning the relationships between alcohol, drugs, or medication and driving performances;

(b) The negative stresses and compensatory measures associated with physical, mental, and social conditions as they relate to driver performances.

Section 6. Upon written notice the Transportation Cabinet may rescind and cancel the certification of approval of any agency conducting the course for good cause, including but not limited to any of the following reasons:

(1) Deletions or additions have been made to the curriculum which have not been specifically approved by the Transportation Cabinet;

(2) The agency or any instructor has failed to comply with any of the provisions of this administrative regulation.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 12, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 10 a.m. in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bill Wilhoite or Larry Moore

(1) Type and number of entities affected: Unknown

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Instructors must submit qualifications, resumes and copy of course curriculum.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: None

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

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Not applicable

LOCAL MANDATE IMPACT STATEMENT

Senate Bill 20

SUBJECT/TITLE: Authority to regulate alcohol schools pursuant to Senate Bill 20

SPONSOR: Transportation Cabinet

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE:

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT: None

FISCAL SUMMARY:

MEASURE'S PURPOSE: To license alcohol substance abuse programs.

PROVISION/MECHANICS: Must apply to the Transportation Cabinet for license

FISCAL EXPLANATION:

PREPARER: Bill Wilhoite

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 35:010. Forms applicable to coal transportation.

RELATES TO: House Bill 25

PURSUANT TO: KRS 42.455. 138.725, 174.080, 177.972, 177.979, 177.980, 186.057, 350.060, 351.175

NECESSITY AND FUNCTION: House Bill 25 requires the filing and maintenance of various forms and applications for its implementation. It further requires guidelines to be established for registration and weight distance and fuel surtax exemptions. In order to compile all of these forms in one (1) manual for easy access, the forms applicable to coal transportation is being published and maintained by the Transportation Cabinet.

Section 1. Manual. (1) The Transportation Cabinet shall publish and maintain a manual titled "Forms Applicable to Coal Transportation." Such manual shall contain the forms, instructions and requisite guidelines to implement KRS 186.057, 177.979, and 177.980. This manual is effective as of July 13, 1984, and incorporated by reference as part of this regulation.

(2) The forms included in the manual are:

(a) Application for increase in vehicle registered weight;

(b) Highway quarterly tax return;

(c) Kentucky unit mileage report;

(d) Monthly tonnage tax return;

(e) Application for motor fuel surtax and weight distance tax exemption;

(f) Extended weight tags, procedures for county clerks;

(g) Motor carriers payment advice;

(h) Application for transportation plan, cooperative agreement, and/or ton-tax license; and

(i) Certified transportation plan.

Section 2. Availability. This manual is adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission, and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622, and any district highway office.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 2 p.m. in the first floor auditorium of the State Office Building, corner of High and Clinton

Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 42.455(8), 174.080, 177.972
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

House Bill 25
SUBJECT/TITLE: Forms applicable to coal transportation
SPONSOR: Division of Motor Carriers, Department of Vehicle Regulation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: State government only
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT: Division level only
FISCAL SUMMARY: Revenues: none; Expenditures: minimal, approximately $1,000-2,000 annually; Net Effect: minimal (-) $1,000-2,000 annually
MEASURE'S PURPOSE: To compile all forms required into one manual for easy access
PROVISION/MECHANICS: Forms being published and maintained by the Transportation Cabinet
FISCAL EXPLANATION: None
PREPARER:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 35:020. Transportation plan, coal cooperative agreements.

RELATES TO: KRS 42.455(8), 177.972, 177.976, 177.979, 186.057, 350.060(11), 351.175(6),

PURSUANT TO: KRS 42.455(8), 174.080, 177.972, 177.976, 177.979, 186.057

NECESSITY AND FUNCTION: KRS 351.175(6) and KRS 350.060(11) require that mine operators submit with their application for mining licenses a transportation plan certified by the Department of Vehicle Regulation. KRS 42.455(8) and KRS 177.972 designate the Transportation Cabinet as the agency responsible to the identification of public highways, roads, streets, and bridges that comprise the official coal haul highway system. KRS 177.976 allows for the operation of vehicles transporting coal in excess of the weights precribed in KRS 189.222 and allows the Commissioner of Vehicle Regulation to restrict or regulate traffic on the coal transportation system in such a manner as is reasonably necessary to promote the safety and convenience of the traveling public. This regulation is adopted to provide for and regulate such hauling, to provide for the gathering of pertinent information from all coal shippers or owners regarding the movement of coal, and to specify the procedures to be used to obtain a certified transportation plan.

Section 1. Application for Transportation Plan. Every person subject to KRS 351.175, 350.060, 42.455 and 177.972 shall apply to the Department of Vehicle Regulation for a certified transportation route and gross weights for each vehicle type whereby the applicant proposes to transport materials. Applications may be obtained from any highway district office or the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622.

Section 2. Form of Application. The application form prescribed by the Department of Vehicle Regulation shall require such information as is necessary to determine the adequacy of the roads, streets, and bridges to carry out weights requested by the applicant an to adequately identify the applicant. The application must be accompanied by a map designating the desired route. Copies of maps may be obtained from the Division of Planning or from the district highway office of the district in which the roads, streets and bridges are located. The specified form is contained in the manual titled, "Forms Applicable to Coal Transportation," adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622 and from any district highway office.

Section 3. Filing of the Application. The original and three copies of the application for a certified transportation plan shall be submitted to the Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622. Said transportation plan, upon receipt by the Department of Vehicle Regulation, shall be forwarded to the Department of Highways for the evaluation of all roads, streets and bridges on the proposed route at the requested weights. A separate application must be filed for each origin and destination between which materials are to be transported.

Section 4. Evaluation of Transportation Plan. (1) The State Highway Engineer shall cause each road, street and bridge listed on the application to be evaluated to determine if the requested weights can be allowed without being unreasonably detrimental to the safety and convenience of the traveling public. Such evaluation may include, but not be limited to, the following:

(a) The design and construction of the roads and bridges.
(b) The current condition of the roads and bridges.
(c) The structural adequacy of the roads and bridges.
(d) The types, numbers, and configurations of the vehicles to be used for the hauling of the coal.
(e) Proposed improvements to be made to the roads or bridges pursuant to a cooperative agreement.
(f) The rate of deterioration and the estimated amount of damage to be sustained by the roads or bridges considering the level of maintenance to be accomplished pursuant to a cooperative agreement and/or normal routine maintenance.
(g) The effect of any approved maintenance, construction, or reconstruction of the roads or bridges to be provided by the state or persons other than the state under a cooperative agreement.
(h) Historical data of the roads and bridges.
(2) After evaluation, the State Highway Engineer shall submit to the Commissioner of Vehicle Regulation in writing his analysis of the proposed transportation plan and his recommendations. The analysis shall be accompanied by reasons setting forth the basis of the evaluation by the State Highway Engineer.

Section 5. Notification to Applicant. Upon receipt of the evaulation from the State Highway Engineer, the Department of Vehicle Regulation shall notify the applicant of the determination of the Department of Vehicle Regulation. If the plan is certified, one (1) original and two (2) copies will be returned to the applicant. If the plan is not certified, the applicant shall be so notified with the reasons as the basis of the rejection set forth. If the plan is certified conditioned upon modification, the applicant will be advised of the required modifications for certification and may make revised application and resubmit it in accordance with Section 3 of this regulation.

Section 6. Change in Transportation Plan. No transportation plan may be changed or rerouted without prior approval of the Department of Vehicle Regulation. Requests for changes shall be processed in the same manner as applications for new transportation plans.

Section 7. Transportation Plan to Serve as Application for Cooperative Agreement or Ton-Tax License. The application for a transportation plan may be co ısidered as an application for a cooperative agreement or a ton-tax license if the applicant completes the applica'ble portions of the application. Cooperative agreements and ton-tax licenses are available only for the transportation of coal.

Section 8. Suspension of Transportation Plan Under Emergency Conditions. In the event the Commissioner of the Department of Vehicle Regultion determines a condition exists which constitutes an imminent danger to the safety and convenience of the traveling public, the commissioner may immediately suspend without notice the transportation plan of any person. Within fifteen (15) days after such suspension, the commissioner shall notice those affected. Any person whose certified transportation plan has been suspended may, within twenty (20) days after notice appeal such action. Upon receipt of a proper and timely appeal, the commissioner or a representative of the department designated by the commissioner may conduct a hearing.

Section 9. Suspension or Revocation of a Transportation Plan. Any person who holds a coal shipper's license or is a party to a cooperative agreement and fails to comply with the terms, conditions, or requirements of such license or cooperative agreement may have served on him by the Commissioner of the Department of Vehicle Regulation notice to said person of his failure to comply. Said notice shall set forth the reasons for any deficiencies and state the time in which such deficiencies shall be remedied. Failure to comply with the directions given in the notice shall constitute just cause for immediate revocation or suspension of any applicable certified transportation plan. Any person whose plan has been suspended or revoked may within twenty (20) days after notice, appeal such action. Upon receipt of a proper and timely appeal the Commissioner of Vehicle Regulation or a represntative of the department designated by the commissioner shall conduct a hearing.

Section 10. Temporary Authority. The commissioner may, upon receipt of proper application, grant temporary certification of a transportation plan where it can be adequately demonstrated that, either the routes proposed to be used have been previously approved for weights equal to or in excess of those contained in the proposed transportation plan, or an emergency condition exists which requires the use of alternate routes other than those previously certified and which have been approved for weights equal to or in excess of those previously approved in his transportation plan.

Section 11. Limitations. No person shall knowingly load or cause to be loaded, or operate or cause to be operated, any vehicle subject to a transportation plan in excess of the limits specified in the certified transportation plan or in excess of the limits specified on any road, street, or bridge other than those listed on the certified transportation plan. No person shall operate or cause to be operated any vehicle in excess of the posted weight limit of any road or bridge unless specifically authorized by permit, agreement or license.

Section 12. Reporting Requirements. (1) On or before the 20th day of the month following the interval in which any coal is shipped over public highways, roads, bridges or streets by or on behalf of any holder of a certified transportation plan from a mine mouth or pit to a processing plan, tipple, loading dock, or customer, or from any of the foregoing locations to another of such locations, the holder of the certified transportation plan shall file a report on Form TD 59-100 (Coal Severer and/or Route and Tonnage Report) or other form designated by the cabinet. This report is to be filed with the Kentucky Department of Highways, Division of Planning, and contain information required by the Transportation Cabinet relative to the ton miles of coal transported on the public highways, streets, roads and bridges of each county, in or through which coal was transported. Unless otherwise specified, the reporting interval shall be a calendar year quarter. These forms will be provided by the Transportation Cabinet to each holder of a certified transportation plan on or before the last day of each reporting interval. A copy of the information furnished to the Natural Resources and Environmental Protection Cabinet pursuant to the permitting requirements of KRS Chapter 350 regarding public road transportation plan may, subject to its approval, be submitted to the Transportation Cabinet to satisfy the reporting requirements of this section. The holder of a certified transportation plan is responsible for obtaining and reporting the origin, the destination, the tons and approximate highway mileage on each route or

road for all coal transported pursuant to said plan on public highways or streets when the coal is sold by a person or organization, such as a broker, or when the coal is transported by another individual or firm engaged in trucking coal for hire.

(2) A holder of a certified transportation plan who is not engaged in the transportation of coal in any way must notify the Department of Highways of the precise nature of his operations in order that his address may be removed either temporarily or permanently from the mailing list of those firms to which forms are periodically sent. Likewise, a holder of a certified transportation plan who ships no coal during an interval shall inform the department of that fact on or before the due date for that interval's report.

Section 13. Annual Updating Required. Certified transportation plans will remain valid unless suspended, revoked, or changed in accordance with this regulation. If there have been no changes, the holder of the certified transportation plan shall annually notify the Department of Vehicle Regulation to that effect.

Section 14. Extended Weights. If a certified transportation plan allows for the transporting of coal on state maintained roads, streets, and bridges in vehicles whose gross weights or axle weights exceed the limits designated by the Secretary of Transportation pursuant to KRS 189.222 all vehicles used for the transportation of the coal must be registered for extended weights. In addition, any person as defined in Section 1 of this regulation and transporting coal in vehicles registered as provided for in KRS 186.057 must also obtain a coal shipper's license in accordance with 601 KAR 9:074.

Section 15. Coal Cooperative Agreements. The provisions of cooperative agreements may be negotiated in conjunction with the Department of Highways concurrently with the evaluation of the transportation plan required by Section 4 of this regulation. Upon receipt of a proposed agreement certified by the State Highway Engineer and recommended by the Commissioner of Highways, the Commissioner of Vehicle Regulation may enter into the cooperative agreement with the applicant.

Section 16. Equitable Apportionment. The equitable apportionment of the incremental costs assigned to a person shall be based upon, but not limited to the following factors:

(1) The cost of surface design, maintenance, construction and reconstruction.

(2) The cost of shoulder design, maintenance, construction and reconstruction.

(3) The cost of bridge design, maintenance, construction and reconstruction.

(4) The tonnage shipped.

(5) The type of vehicles used.

(6) The number of vehicles used.

(7) Other pertinent factors related to the transportation of coal at extended weights.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 2 p.m. in the first floor auditorium of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal, possibly between $1,000 and $2,000

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal, between $1,000 and $2,000

2. Continuing costs or savings:Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

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

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 42.455(8), 174.080, 177.972

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments:

Tiering:

Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

House Bill 25

SUBJECT/TITLE: Transportation Plan, Coal Cooperative Agreements

SPONSOR:

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE: State government only

LEVEL(S) OF IMPACT:

BUDGET UNIT(S) IMPACT: N/A

FISCAL SUMMARY: Revenues: None; Expenditures: None; Net Effect: None

MEASURE'S PURPOSE: To provide for the gathering of information from all coal shippers or owners regarding the movement of coal so that Transportation may identify the official coal haul highway system.

PROVISION/MECHANICS: By specifying the procedures to be used to obtain a certified transportation plan.

FISCAL EXPLANATION: None

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 35:040. General ton tax provisions.

RELATES TO: KRS 177.979, 177.980

PURSUANT TO: KRS 177.980

NECESSITY AND FUNCTION: Under KRS 177.980, a provision is made for payment of a tax with the rate depending upon the shipping distance of the coal. Under

this section, no cooperative agreement is necessary. The operator, processor, shipper, etc., must have a valid, certified transportation plan in effect prior to his shipping any coal at extended weights. This administrative regulation is needed in order to implement the ton tax provisions of House Bill 25.

Section 1. Definitions. For the purpose of this regulation, the following definitions shall apply:

(1) A "motor carrier" is defined as a motor vehicle.

(2) "Extended weights" means weights in excess of the weights authorized by the Secretary of Transportation pursuant to KRS 189.222 on the state maintained highway system and pursuant to KRS 189.221.

(3) The "point at which coal is mined" means the point at which a motor vehicle transporting coal pursuant to a certified transportation plan first enters the public highway system.

Section 2. Shipping Requirements. Upon receipt of a certified transportation plan as defined in 601 KAR 35:020 and a valid ton tax license number, the operator, processor, or shipper may begin shipping coal at extended weights in vehicles registered pursuant to KRS 186.057.

Section 3. Proper Registration/Condition Precedent. All motor vehicles transporting coal at extended weights must be properly registered under KRS 186.057 for such weights. No vehicle shall carry weight in excess of its properly licensed weight.

Section 4. Limitations. All motor vehicles registered under KRS 186.057 and transporting coal at extended weights pursuant to a ton tax license shall be limited to a radius of seventy-five (75) air miles from the point at which the coal is mined.

Section 5. Payment of Administrative Costs. All funds necessary for the assessment and collection of the ton tax may accrue to and be paid out of the restricted fund established in KRS 177.978.

Section 6. Notice of Transportation Plan to Motor Vehicle Operators. All mine operators, processors, and shippers shall provide a copy of their certified transportation plan issued pursuant to 601 KAR 35:020 to all vehicles transporting coal at extended weights on their behalf.

Section 7. Vehicles registered pursuant to KRS 186.057 must obtain a certified transportation plan. Such vehicles shall not be subject to either ton tax provisions or a cooperative agreement.

FLOYD G. POORE, Secretary

APPROVED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 2 p.m. in the first floor auditorium of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore

(1) Type and number of entities affected: All licensed coal mine operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Monthly tax returns and/or occasional contract agreement payments by those eligible mine operations choosing to operate under, and granted, approved transportation plans.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Additional employee and equipment costs to be paid out of special fund created by the proceeds of ton tax and cooperative agreement payments authorized out of House Bill 25.

1. First year:
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Maintenance of files and processing of estimated 2,000 additional tax returns monthly.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method; mandated by statute.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: N/A

Tiering:

Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

House Bill 25

SUBJECT/TITLE: General ton tax provisions

SPONSOR: Division of Motor Carriers, Department of Vehicle Regulation

NOTE SUMMARY

LOCAL GOVERNMENT MANDATE: No

TYPE OF MANDATE: N/A

LEVEL(S) OF IMPACT: None

BUDGET UNIT(S) IMPACT: None

FISCAL SUMMARY: Revenues: N/A; Expenditures: N/A; Net Effect: N/A

MEASURE'S PURPOSE: To supplement the form and manner of reporting cooperative agreement payments and coal tonnage taxes in respect to operations under approved transportation plans as authorized by House Bill 25.

PROVISION/MECHANICS: Provides mechanism for the reporting and payment of those taxes and cooperative agreement payments authorized by House Bill 25; and, provides for the claiming of exemption from motor fuel use tax and weight distance tax authorized in the same legislation.

FISCAL EXPLANATION: Will require procurement of additional equipment and the employment of additional accounts and file personnel by Tax Branch of Division of Motor Carriers, Dept. of Vehicle Regulation. Such expenditures, pursuant to legal opinion, are to be paid out of a portion of the proceeds of those taxes and cooperative agreement payments authorized by House Bill 25.

PREPARER:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 35:050. Registration for extended weights.

RELATES TO: KRS 186.057
PURSUANT TO: KRS 186.057, 186.0571
NECESSITY AND FUNCTION: Pursuant to KRS 186.057 and 186.0571, the Department of Vehicle Regulation is vested with the responsibility of registering vehicles which may, primarily, transport coal at weights in excess of 80,000 pounds. This registration is subject to all laws and regulations now in effect. This administrative regulation is necessary to provide the procedures for such vehicle registration.

Section 1. Definitions. For the purpose of this regulation, the following definitions shall apply: (1) Primarily transporting coal—Ninety (90) percent of each vehicle's mileage must be either generated when the vehicle is empty or made in shipment of coal, and for each shipment to qualify the commodity must be 100 percent coal, coal refuse, or coal by-products related to the mining operation.

(2) Motor carrier—A motor carrier is defined as a motor vehicle.

(3) Extended weight license identification—Registration issued pursuant to KRS 186.057 permitting the licensing of vehicles to be operated at a gross weight greater than 80,000 pounds.

(4) Extended weights—Weights in excess of the weights authorized by the Secretary of Transportation pursuant to KRS 189.222 on the state-maintained highway system and pursuant to KRS 189.221.

(5) Apportioned registration—As defined in 601 KAR 9:045.

Section 2. Extended Weight License. All persons intending to primarily transport coal at extended weights shall apply for an extended weight license. The applicant shall use the vehicle transaction record and follow the guidelines as contained in the manual, Forms Applicable to Coal Transportation, adopted as 601 KAR 35:010 on July 13, 1984, a copy of which is on file with the Legislative Research Commission and available from the Transportation Cabinet, Department of Vehicle Regulation, 1001 State Office Building, Frankfort, Kentucky 40622 and any district highway office. The applicant shall refer to the registration type as an "Extended Weight/Coal."

Section 3. Registration Decal. All persons, except apportioned registrants, registering pursuant to KRS 186.057 shall be issued a decal to be affixed to the left inside of the front windshield. Such decal shall bear the identical number as that on the registrant's license plate.

Section 4. Apportioned Registration. Any apportioned registrant who is validly registered under the forms applicable to coal transportation agreement, primarily transports coal, and has paid a fee for the extended weight license may receive a decal to be affixed to the left inside of the front windshield, indicating said registrant is validly registered under KRS 186.057. The Division of Motor Vehicle Licensing shall formally acknowledge receipt of the fee as so provided.

Section 5. Requirement for a Certified Transportation Plan. No registration issued pursuant to KRS 186.057 shall be considered a license to transport coal at extended weights absent a certified transportation plan. A copy of the certified transportation plan issued pursuant to 601 KAR 35:020 must be carried in the vehicle at all times when the vehicle is transporting coal at extended weights. Vehicles registered pursuant to KRS 186.057 must obtain a certified transportation plan. Such vehicles shall not be subject to either ton-tax provisions or a cooperative agreement.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed new administrative regulation will be held August 22, 1984 at 2 p.m. in the first floor auditorium of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must, in writing, no later than August 17, 1984, so notify: Larry E. Moore, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Trager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: One new application; minimal cost.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings:N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: One new application; minimal cost.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable in this situation.

LOCAL MANDATE IMPACT STATEMENT

House Bill 25
SUBJECT/TITLE: Kentucky Extended Weight/Coal Licenses
SPONSOR: Department of Vehicle Regulation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: N/A; Expenditures:

N/A; Net Effect: N/A
MEASURE'S PURPOSE: To clarify procedural matters in the issuance of extended weight tags.
PROVISION/MECHANICS:
FISCAL EXPLANATION: It is not anticipated that this regulation will cause any appreciable revenue/expenditure
PREPARER: John Trager

TRANSPORTATION CABINET
Office of Aeronautics

602 KAR 15:020. State aid for airport development projects.

RELATES TO: KRS 183.120, 183.505, 183.764
PURSUANT TO: KRS 183.024, 183.505
NECESSITY AND FUNCTION: This administrative regulation defines the procedure that must be followed in order to obtain financial aid from the Transportation Cabinet, Office of Aeronautics for an airport development project (as defined in KRS 183.011(14)) for a public airport owned by another state agency, an airport board appointed pursuant to KRS 183.132 or a city and/or county government.

Section 1. To be eligible for financial aid from the airport development fund under this administrative regulation for the airport must meet the following criteria:
(1) The airport must be publicly-owned;
(2) The airport must be available for public use;
(3) The proposed development project must be consistent with the airport type and degree of facility development contained in the state airport system plan;
(4) The proposed development project must either be in accordance with the airport's approved master plan or to prepare or update the airport's master plan; and
(5) The airport must be in compliance with the minimum safety standards set forth in 602 KAR 20:010 to 602 KAR 20:110 or the proposed development project must bring the airport in compliance with those standards.

Section 2. (1) An airport owner may apply for state aid for airport development projects. Airport development is defined in KRS 183.011(14) and is used in the same context in this regulation except that it shall include airport maintenance and such maintenance shall be limited to pavement seal coats and overlays, joint repair, obstruction removal or approach clearing and drainage repair.
(2) To apply for state airport development funds, the airport owner must submit a "Request for State Funds for Airport Development," form TC 56-15A, to the Transportation Cabinet, Office of Aeronautics, State Office Building, Frankfort, Kentucky 40622, referred to as Office of Aeronautics. The application form must be completed and must contain the project description, the reason for the project, the estimated cost of the project, and the anticipated funding sources. This form is available from the Office of Aeronautics.

Section 3. If a project application is approved for funding by the Office of Aeronautics, a "Tentative Allocation," form TC 56-15B, will be issued to the airport owner. The "Tentative Allocation" will show the amount of state funds reserved for the project, the scope or the approved project and the time frame for which it is being considered. The Office of Aeronautics reserves the right to limit the scope of a project and cost estimates as necessary to conform to available funds.

Section 4. (1) If not already prepared, the airport owner is responsible for the preparation of the engineer's report which explains the design criteria, design plans, and specifications, subsequent to the issuance of the "Tentative Allocation." The design plans and specifications must be approved by the Office of Aeronautics and where appropriate, shall incorporate but not be limited to the following:
(a) "Standard Specifications for Road and Bridge Construction" published in 1983 by the Transportation Cabinet, Department of Highways;
(b) Federal Aviation Regulations Part 139; and
(c) Federal Aviation Administration Advisory Circulars in the 150 series.
Copies are available for viewing in the Office of Aeronautics.
(2) After the design plans and specifications have been approved, in order to establish reimbursable costs, the airport owner shall adhere to the applicable procedurement standards outlined in KRS Chapters 45, 45A and 56.

Section 5. After the reimbursable costs have been established for the project, the airport board may submit a "Project Application," form TC 56-15C, to the Office of Aeronautics. This application form must be completed and must contain the revised scope of project, the elements of cost, the source of funds, and an assurance that the airport board will not discriminate against any person or class of persons by reason of race, color, creed or national origin in the operation of the airport. The "Project Application" forms are available from the Office of Aeronautics.

Section 6. (1) After the Office of Aeronautics approves the submitted project or a portion thereof, a "State Grant for Airport Development," form TC 56-15D, will be issued to the airport owner. The grant form will show the scope of the project as finally approved and the amount of state funds obligated to the project. If the airport owner agrees to the terms of the state grant, it may accept the grant form and must return an executed copy to the Office of Aeronautics.
(2) The execution of the grant form is the airport owner's authorization from the Office of Aeronautics to have the contractor proceed. Unless otherwise agreed to, no construction costs incurred prior to the execution of the grant agreement are eligible for state participation. A copy of the notice to proceed to the contractor must be furnished to the Office of Aeronautics.
(3) Land acquisition, administrative, legal and engineering costs incurred prior to the execution of the grant form may be eligible for state participation at the discretion of the Office of Aeronautics.

Section 7. (1) To receive the state's share of the project costs the airport board must submit to the Office of Aeronautics copies of the bills from the contractors, suppliers, engineers, attorneys, and others involved in the project and attach said copies to a completed "Standard Invoice," form TC 31-519. Copies of this form are available from the Office of Aeronautics.
(2) Final payment from the Office of Aeronautics will not be sent to the airport board until after audit of the project cost performed in accordance with the standards set forth in Attachment P, OMB Circular A 102, dated October 22, 1979. Copies of the standards are available for viewing in the Office of Aeronautics.

Section 8. If the final project costs exceed the total amount agreed to in the "State Grant for Airport Develop-

ment," the Office of Aeronautics shall incur no obligation to bear any portion of the increased project cost.

Section 9. By acceptance of such airport development grant funds, the airport owner agrees to make the airport on which the funds were expended available for public use for a minimum period of twenty (20) years. Failure to comply with this requirement shall be just cause for the Office of Aeronautics to seek refunding or returning of all funds furnished in the last twenty (20) years for all of the airport development projects associated with the subject airport.

ROBERT COX, Executive Director
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 13, 1984
FILED BY LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held August 23, 1984 at 1:30 p.m. in the 4th floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing by August 18, 1984: Larry E. Moore, Assistant to the Secretary, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry E. Moore
(1) Type and number of entities affected: 69 Kentucky airport boards.
(a) Direct and indirect costs or savings to those affected:
1. First year: $750,000 savings to local airport boards by sharing in development costs.
2. Continuing costs or savings: Dependent on state funds available. Usually $750,000 annually.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Availability of funds from Federal Aviation Administration.
(b) Reporting and paperwork requirements: Application forms, payment request and audits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Cost $750,000.
2. Continuing costs or savings: As in (1)(a)2, $750,000 or so each year.
3. Additional factors increasing or decreasing costs: Availability of funds from FAA and local governments.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Improving airport should increase local economy and thus revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is not provided state aid. Rejected because of negative impact.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The application process should be the same for all airport boards.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: State Aid for Airport Development Projects
SPONSOR: Transportation Cabinet
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE: To provide procedures for applying and receiving state aid for airport development. No local government unit is required to apply or fund any project.
PROVISION/MECHANICS: N/A
FISCAL EXPLANATION: N/A

TRANSPORTATION CABINET
Department of Highways

603 KAR 5:130. Hauling building materials to a road construction project.

RELATES TO: KRS 189.221
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: This regulation is needed in order to specify on which highways in the Commonwealth trucks hauling building materials to a road construction project may haul up to 80,000 pounds gross weight without a permit. The Secretary of Transportation, under the authority of KRS 189.222, has increased the maximum gross weight of the entire state maintained system to a minimum of 44,000 pounds. Therefore, KRS 189.221(6) does not apply to the state maintained system.

Section 1. Trucks hauling building material to a road construction project may haul up to 80,000 pounds on the county road system in accordance with KRS 189.221(6).

Section 2. Trucks hauling building material to a road construction project over the state maintained system cannot exceed the legal axle and gross weights outlined in KRS 189.221 and 189.222 and in 603 KAR 5:095 without a permit as issued in accordance with KRS Chapter 189.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 30, 1984, at 10 a.m. in the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing no later than August 25, 1984: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: Highway contractors operating in Kentucky.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: Several contractors have interpreted Senate Bill 67 passed by the 1984 General Assembly to mean that it is permissable for them to haul across any highway in the Commonwealth up to 80,000 pounds of building material to a road construction project without a permit. The Transportation Cabinet does not interpret this new law that way and is promulgating this administrative regulation to ensure that no one else does. During the 1984 session of the General Assembly this subject was extensively discussed with the Transportation Committees, the Federal Highway Administration and the Transportation Cabinet. During committee meetings members of the General Assembly assured representatives of both the Transportation Cabinet and the Federal Highway Administration that Senate Bill 67 in no way applied to the state maintained system. Senate Bill 67 is applicable solely to the county maintained system of roads.

Tiering:
Was tiering applied? No. Not applicable to this situation.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Hauling building materials to a road construction project
SPONSOR: Transportation Cabinet
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE: To exempt the state maintained system of highways from those roads on which a contractor may haul up to 80,000 pounds of building material to a road construction project.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S):

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:020. Non-Urbanized public transportation program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: The non-urbanized public transportation program is authorized and governed by Section 18 of the Urban Mass Transportation Act of 1964, as amended; 49 USC 1601 et seq. and 49 CFR 825. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the non-urbanized public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the non-urbanized public transportation program as authorized by Section 18 of the Urban Mass Transportation Act and KRS Chapter 96A, the following are adopted by reference: (1) The Section 18 Application Guidelines issued March, 1982 and last revised June, 1984, by the Transportation Cabinet.
(2) The Section 18 Continuing Application Guidelines issued May, 1982 and last revised June, 1984, by the Transportation Cabinet.
(3) The State Management Plan for the Section 18 Program issued April, 1981 and last revised May, 1984, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: 20 public transportation operators.
(a) Direct and indirect costs or savings to those affected:
1. First year: $1.8 million in savings to non-urbanized area public transportation operators.
2. Continuing costs or savings: Depends on the amount of federal funds authorized. Generally, around $1.8 million.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Project applications, payment requests, monthly reports and audits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Administrative costs of about $100,000 a year are covered with 100% federal funds.
2. Continuing costs or savings: Administrative costs average $100,000 a year on an ongoing basis.
3. Additional factors increasing or decreasing costs: Special studies or activities contracted to consultants may cause small fluctuations.
(b) Reporting and paperwork requirements: Status

reports, letter of credit submittals, program of projects, and audits.

(3) Assessment of anticipated effect on state and local revenues: No impact on state revenues, local matching requirements do require the commitment of local funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative is to not accept the federal funds; rejected due to negative impacts.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The application process should be the same for all applicants.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Non-urbanized Public Transportation
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: $1,900,000; Expenditures: $1,900,000; Net Effect: 0
MEASURE'S PURPOSE: To provide procedures for applying for and receiving federal financial assistance for the operation and administration of public transportation services in non-urbanized areas. Local governments are not required to apply for funds; however, if they do they are required to provide a local match.
PROVISION/MECHANICS: N/A
FISCAL EXPLANATION: N/A
DATA SOURCE(S):

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:030. Elderly and handicapped public transportation program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: The elderly and handicapped public transportation program is authorized and governed by Section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended; Public Law 88-365, as amended; 49 USC 1601 et seq. and 49 CFR 601.2. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the elderly and handicapped public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the elderly and handicapped public transportation program as authorized by Section 16(b)(2) of the Urban Mass Transportation Act and KRS Chapter 96A, the following is adopted by reference: The Section 16(b)(2) Application Guidelines issued August, 1978 and last revised June, 1984, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER
Commissioner
FLOYD G. POORE
Secretary

APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore

(1) Type and number of entities affected: 49 private non-profit agencies serving the elderly and handicapped.

(a) Direct and indirect costs or savings to those affected:

1. First year: $500,000 savings to elderly and handicapped transportation providers for the purchase of small buses and vans.

2. Continuing costs or savings: Depends on the amount of federal funds authorized. Generally, around $500,000.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Inflation.

(b) Reporting and paperwork requirements: Project applications, monthly reports and audits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Administrative costs around $30,000 covered with 80% federal funds and 20% state match. State match of capital is $55,000/year.

2. Continuing costs or savings: Administrative costs of $30,000 are ongoing. State match of 10% on capital purchase cost an additional $55,000 on an ongoing basis.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Status reports, letter of credit submittals, application, and audit.

(3) Assessment of anticipated effect on state and local revenues: Program match requirements do require the commitment of one state or local dollar for every 4 federal dollar.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative to not accept federal funds is not acceptable due to negative impacts.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The application process should be the same for all applicants.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Elderly and Handicapped Public Transportation
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: $600,000; Expenditures: $600,000; Net Effect: 0
MEASURE'S PURPOSE: To provide procedures for applying for and receiving federal financial assistance for the purchase of small buses and vans to be used by private non-profit agencies to serve the elderly and handicapped. Local agencies are not required to apply; however, they are required to provide a portion of the local match.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S):

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:040. Public transportation capital assistance program.

RELATES TO: KRS 96A.010 through 96A.370
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: The Public Transportation Capital Improvement Program is authorized and governed by the budget bill adopted by the Kentucky General Assembly. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agencies appropriations and grants to accomplish the promotion and develpment of mass transit services in Kentucky. The function of this regulation is to implement the procedures required to administer the nonurbanized public transportation program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the public transportation capital assistance program as authorized by the General Assembly and KRS 96A, the following is adopted by reference: The Public Transportation Capital Improvement Program issued May, 1982 and last revised August, 1983, by the Transportation Cabinet.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER
Commissioner
FLOYD G. POORE
Secretary

APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: All categories of public transportation providers in the state. 75 agencies in total realize savings from this state program.
(a) Direct and indirect costs or savings to those affected:
1. First year: $507,000.
2. Continuing costs or savings: Continuing benefits depend on state authorizations. Generally, range from $500,000 to $600,000.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Inflation.
(b) Reporting and paperwork requirements: Invoices and audits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $507,000 in costs from the general fund through the Cabinet.
2. Continuing costs or savings: Continuing costs depend on state authorizations. Generally from $500,000 to $600,000.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: PTP preparation, quarterly status report.
(3) Assessment of anticipated effect on state and local revenues: This program reduces the demand for local revenue by shifting a portion of the burden to the state.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative of not providing the program would have an adverse affect on transit operators.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The application process should be the same for all applicants.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Public Transportation Capital Assistance
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: approx. $507,000; Expenditures: approx. $507,000; Net Effect: 0
MEASURE'S PURPOSE: To provide procedures for applying for and receiving state financial assistance for public

transportation capital improvement projects. The program provides up to one-half of the local match for federally funded projects where 80% of the costs are borne by a federal program.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S):

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:050. Local rail service assistance program.

RELATES TO: Kentucky Acts 1982, Chapter 184, Section 8 and Senate Bill 238 passed by the 1984 Kentucky General Assembly
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: Title VIII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and as amended by Title I of the Local Rail Service Assistance Act of 1978, and 49 USC 1654 authorizes the states to implement a local rail service assistance program. The function of this regulation is to implement the procedures required to administer the local rail service assistance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the local rail service assistance program as authorized by Title VIII of the 4R Act, the following is adopted by reference: (1) Title 49, Part 266, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER
Commissioner
FLOYD G. POORE
Secretary

APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: All rail carriers in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: $122,000 savings per year in rail transportation costs.
2. Continuing costs or savings: $420,000 savings per year in rail transportation costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Shipper surveys, and project status reports throughout the duration of the project.
(a) Direct and indirect costs or savings:
1. First year: $50,000 in administrative cost.
2. Continuing costs or savings: $50,000 in administrative cost.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Grant applications and quarterly reporting.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives would be to reject the federal funds, but this is rejected because of positive B/C of program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Federal regulations are uniform for all rail carriers.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Local Rail Service Assistance
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: approx. $125,000; Expenditures: approx. $125,000; Net Effect: 0
MEASURE'S PURPOSE: To make public the regulations governing the distribution of Local Rail Assistance Funds in Kentucky.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S):

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:060. Urbanized area transportation planning.

RELATES TO: KRS 176.050, 176.240
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: Title 23 USC Section 134, 49 CFR Part 613, 23 CFR Part 450, the 1972 Federal-Aid Highways Act, and the 1978 Surface Transportation Assistance Act require that each urbanized area, as a condition of receive of federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized areas. These plans and programs support transportation improvements and subsequent project development activities in the area. The function of the regulation is to implement the procedures required to administer the program in accordance with applicable state and federal law and regulations.

Section 1. In order to facilitate the administration of this program the following are adopted by reference:
(1) Title 49, Part 613, U.S. Code of Federal Regulations.
(2) Title 23, Part 450, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER
Commissioner
FLOYD G. POORE
Secretary

APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: metropolitan planning organizations - seven.
(a) Direct and indirect costs or savings to those affected:
1. First year: $422,133
2. Continuing costs or savings: (approx. $425,000)
3. Additional factors increasing or decreasing costs (note any effects upon competition): Federal obligational authority limitations possibly affect this program.
(b) Reporting and paperwork requirements: Quarterly reports, audits, work programs, transportation improvement programs, certification statements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $76,600
2. Continuing costs or savings: ($80,000)
3. Additional factors increasing or decreasing costs: Staff salary changes.
(b) Reporting and paperwork requirements: Review technical work - participate in technical and engineering work related to the program - review invoices.
(3) Assessment of anticipated effect on state and local revenues: This process identifies transportation needs on local and state responsible systems - revenues required to meet these needs would be identified.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Use of federal funds for projects in urbanized areas depend upon this planning alternative.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
Tiering:
Was tiering applied? No. All MPOs perform similar transportation planning work, and should have the same application procedure.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Urbanized Area Transportation Planning
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: approx. $425,000; Expenditures: approx. $425,000; Net Effect: 0
MEASURE'S PURPOSE: Provide procedures for applying, receiving and distributing federal PL funds.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S): Federal authorizations.

TRANSPORTATION CABINET
Department of Highways
Division of Mass Transportation

603 KAR 7:070. Carpool project.

RELATES TO: KRS 176.050, 176.240
PURSUANT TO: KRS 174.080
NECESSITY AND FUNCTION: The 1978 Surface Transportation Assistance Act, Section 126 and 23 USC 146A authorized the formation and funding of ridesharing agencies in urban and urbanized areas. The function of this regulation is to implement the procedures required to administer this program in accordance with the applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of this program the following is adopted by reference: Title 23, Part 656, U.S. Code of Federal Regulations.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Division of Mass Transportation, 11th Floor, State Office Building, Frankfort, Kentucky 40622.

STEPHEN REEDER
Commissioner
FLOYD G. POORE
Secretary

APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled for August 21, 1984, at 10:30 a.m. at the 4th Floor Hearing Room, State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Larry E. Moore, Chief Administrative Assistant, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry Moore
(1) Type and number of entities affected: Local ridesharing agencies - three.

(a) Direct and indirect costs or savings to those affected:
1. First year: $200,000
2. Continuing costs or savings: ($200,000)
3. Additional factors increasing or decreasing costs (note any effects upon competition): Federal obligational limitation possibly affect this program.
(b) Reporting and paperwork requirements: Quarterly reports, audits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $10,000
2. Continuing costs or savings: ($10,000)
3. Additional factors increasing or decreasing costs: Staff salary changes.
(b) Reporting and paperwork requirements: Review technical work - invoices.
(3) Assessment of anticipated effect on state and local revenues: Local ridesharing needs may be identified that require state or local funding.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Rejected "do nothing" alternative in order to improve ridesharing.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Similar work is performed by all ridesharing agencies and should have the same application procedures.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Carpool projects
SPONSOR: KTC, DOH, Mass Transportation
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Revenues: approx. $200,000; Expenditures: approx. $200,000; Net Effect: 0
MEASURE'S PURPOSE: Provide procedures for receiving and distributing federal funds to promote and finance local ridesharing programs.
PROVISION/MECHANICS:
FISCAL EXPLANATION:
DATA SOURCE(S): Transportation Improvement Programs - Work Programs.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 1:115. Annual in-service training of district board members.

RELATES TO: KRS 160.180
PURSUANT TO: KRS 156.070, 160.180
NECESSITY AND FUNCTION: KRS 160.180 provides all local school board members complete at least fifteen (15) hours of in-service training annually and that the State Board of Education shall identify the criteria for fulfilling such requirements. This regulation establishes standards for the annual in-service training of district board members.

Section 1. Each member of a district board of education shall obtain at least fifteen (15) clock hours of in-service training each calendar year in topics relating to the responsibilities of local district board members. The topics may include but not be limited to the following subjects:
(1) The basic role and responsibility of the district board and its members;
(2) Instructional programs;
(3) District finance;
(4) Relations with superintendent and staff;
(5) School law; and
(6) Community relations.

Section 2. (1) The Kentucky School Boards Association is recognized as the approved provider of a minimum of ten (10) hours of district board member in-service training. As the approved provider, the Kentucky School Boards Association shall, in cooperation with the Superintendent of Public Instruction, annually develop an in-service training plan for the review and approval of the State Board of Education. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates.
(2) District board members may choose to obtain a maximum of five (5) hours in-service training annually in activities other than those conducted by the Kentucky School Boards Association. The local district board of education shall by board action certify completion of any or all of these five (5) hours of in-service training meeting the requirements of Section 1 of this regulation in writing to KSBA, which shall combine such hours with hours of in-service training received through its approved activities. The certification to KSBA shall include a description of the time, date, location, and description of the five (5) hours of in-service training. These records shall be submitted annually to the State Board of Education.

Section 3. The names of all district school board members who fail to complete the required fifteen (15) hours of in-service training shall be transmitted by the Department of Education to the Attorney General.

Section 4. The State Board of Education, in cases of emergency, may grant an extension of time within which a local board member may complete the fifteen (15) hours of in-service training requirement.

Section 5. The annual fifteen (15) hours in-service training requirement shall become effective January 1, 1985.

ALICE McDONALD
Superintendent of Public Instruction
APPROVED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert E. Spillman
(1) Type and number of entities affected: 180 local boards of education including 902 members.
(a) Direct and indirect costs or savings to those affected:
1. First year: Approximately $135,300
2. Continuing costs or savings: Same as above
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Each local board will submit a report to the KSBA who will assemble the information and provide an annual report to the State Board of Education
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Annual report will be submitted to the Attorney General's Office
(3) Assessment of anticipated effect on state and local revenues: The cost identified in 1 (above) will be the responsibility of local boards of education.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives included other agencies providing the training as well as the Department of Education maintaining the records of those who had attended. Those alternatives were rejected because they were less efficient and would have increased the cost.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No, need for uniformity throughout state.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 3:190. Maximum class sizes.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 156.070, 157.360
NECESSITY AND FUNCTION: KRS 157.360(2)(b) prescribes that the Superintendent of Public Instruction shall enforce maximum class sizes for every academic course requirement of the State Board of Education in kindergarten and grades one (1) through six (6), except in vocal and instrumental music, art, physical education, and special education classes and shall establish procedures for exemptions to the above. This regulation implements such functions.

Section 1. The maximum number of pupils enrolled in each academic class in grades kindergarten, one (1), two (2), and three (3) shall not exceed twenty-nine (29), except classes in vocal and instrumental music, art, and physical education. The maximum number of pupils enrolled in each academic class in grades four (4), five (5), and six (6) shall not exceed thirty-one (31), except classes in vocal and instrumental music, art, and physical education.

Section 2. (1) A superintendent of a local school district may request approval from the State Board of Education for a one (1) year exemption of no more classes than enroll twenty (20) percent of the pupils in kindergarten and grades one (1) through six (6), when unusual circumstances are believed to warrant an increased class size for a specific class or classes.
(2) The request for exemption shall be filed with the Professional Staff Data forms and shall be forwarded to the Office of Local Services, Division of School Management and Audit, not later than October 1.
(3) The request for exemption shall contain detailed, specific reasons and circumstances causing the increased class size for each class for which an exemption is requested.
(4) The request for exemption shall contain an educational plan assuring that all affected students will receive a quality education.
(5) The request for exemption shall include a specific plan for reducing the class size prior to the beginning of the next school year. A single class of students, having once been exempted, will not qualify for exemption in subsequent years.
(6) Enrollment in a class for which an exemption has been approved shall not exceed thirty-five (35) students unless another teacher or an aide is provided.

Section 3. The Office of Local Services shall enforce this regulation through examination of the enrollments recorded on each Professional Staff Data form and shall certify compliance or deny Foundation Program units to a school district in non-compliance with this regulation.

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert E. Spillman
(1) Type and number of entities affected: 180 school districts
(a) Direct and indirect costs or savings to those affected:
1. First year: Will require restructuring of teaching staff in some districts
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Will marginally increase for those districts seeking exemption
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local

revenues: The restructuring of local staffs may require additional local revenues. Foundation Program formula was not altered

(4) Assessment of alternative methods; reasons why alternatives were rejected: Required by statute.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No, new regulation

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 3:320. Essential skills for mathematics and reading.

RELATES TO: KRS 158.750
PURSUANT TO: KRS 156.070, 156.160, 158.750
NECESSITY AND FUNCTION: KRS 158.750 specifies that the State Board of Education shall assure that each pupil in the public schools of the Commonwealth is taught and is mastering the essential skills necessary to function in each basic skills area defined by KRS 158.650. The state board must also determine the essential skills necessary for pupils to successfully complete each grade level and develop and disseminate tests to determine mastery of essential skills. This regulation defines essential skills for the basic skill areas of mathematics and reading to be tested during the 1984-85 school year.

Section 1. Each local district board of education shall assure that each pupil in the district is taught and is mastering the essential skills as determined by the State Board of Education for each of the basic skills areas defined by KRS 158.650. The essential skills identified for the basic skills areas of mathematics and reading, as approved by the State Board of Education, comprise the document "Essential Skills for Kentucky's Public Schools, July 1984," which is incorporated herein by reference and copies of which may be obtained from the Office of Instruction.

Section 2. Each local district board of education shall prior to the end of the 1984-85 school year, and each year thereafter, administer to each public school student (K-12) in the district essential skills tests as adopted by the State Board of Education to determine mastery of essential skills in the basic skills areas of mathematics and reading as defined by KRS 158.650.

Section 3. Each local district board of education shall prior to the end of the 1985-86 school year, and each year thereafter, administer to each public school student (K-12) in the district essential skills tests to determine mastery of essential skills in each of the basic skills areas of mathematics, reading, writing, spelling and library research reference skills as defined by KRS 158.650.

ALICE McDONALD
Superintendent of Public Instruction
ADOPTED BY AGENCY: July 9, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rebecca Brown

(1) Type and number of entities affected: All public school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Administration of essential skills test in the basic skills areas.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $800,000 FY 85
2. Continuing costs or savings: $1,000,000 FY 86
3. Additional factors increasing or decreasing costs: Annual enrollment K-12; printing of test documents; revision of test documents

(b) Reporting and paperwork requirements: The Department of Education must disseminate essential skills lists, essential skills test and must score or cause to be scored all test documents and compile and analyze results.

(3) Assessment of anticipated effect on state and local revenues: None

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

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This represents the implementation of a key strategy in education reform in Kentucky which was endorsed by the Superintendent of Public Instruction, the Governor and the General Assembly.

Tiering:
Was tiering applied? No. Tiering was not applied because of the need for uniformity

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:300. Adjunct instructor certificate.

RELATES TO: KRS 161.020, 161.025, 161.030, 161.046
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.046 establishes the position of adjunct instructor and directs the State Board of Education to establish implementing regulations; and KRS 161.020, 161.025, and 161.030 set

forth the general certification authority of the state board. This regulation sets the minimum requirements for adjunct instructor certificates and sets forth the procedure for making a determination that qualified teachers with regular certificates are not available for positions that might be filled by adjunct instructors. Further provisions require the local school boards to involve adjunct instructors in an appropriate orientation program.

Section 1. (1) In order to comply with KRS 161.046 to establish the need for employing adjunct instructors, the superintendent of the local school district and the board of education shall make the following declaration to the Superintendent of Public Instruction on request forms supplied by his office:

(a) No qualified teachers have applied for the vacant position, and to our knowledge qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and, furthermore, the vacancy has been made known locally by appropriate means; and

(c) The local school district has been unsuccessful in recruiting teachers for the vacant position either from the listings of teachers supplied by the Department of Education or by means of the placement services of the teacher education institutions.

(2) The declaration of the unavailability of regularly certified and qualified teachers for a particular vacancy shall be sufficient to establish that there is a critical teacher shortage on a local district basis to satisfy the language of KRS 161.046.

(3) Adjunct instructors shall meet the requirements for minimum age and for good moral character as required in KRS 161.040. Adjunct instructors employed for departmentalized instruction in grades seven (7) through twelve (12) shall hold a bachelor's degree from a regionally accredited institution with an overall minimum grade point average of 2.5 and a major, minor, or area of concentration in the speciality subject to be taught with a minimum grade point average of 2.5. Adjunct instructors for the elementary grades kindergarten through eight (8) shall hold a bachelor's degree from a regionally accredited institution with a minimum overall grade point average of 2.5. Adjunct instructors for vocational education-industrial education shall be high school graduates and shall have at least four (4) years of appropriate occupational experience for the industrial education speciality to be taught.

(4) Adjunct instructors shall be certified and employed for only one (1) year at a time.

(5) The Superintendent of Public Instruction, depending upon the condition of teacher shortage and the qualifications of the applicant, shall approve or disapprove a request for certification as an adjunct instructor. The term of validity of the certificate for adjunct instructor may be limited to a period of less than the full school year; however, the beginning date shall be no earlier than the date the request form is received in the Department of Education.

(6) An application form signed by the local district superintendent and approved by the local board of education shall be submitted for each adjunct instructor. The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any unusual competencies or experiences submitted in support of the application.

Section 2. Each local board of education shall provide for an orientation program for any adjunct instructors employed within the district. A description of the orientation program shall be a part of the certificate application form.

Section 3. For purposes of funding through the foundation law, an adjunct instructor shall be classified no higher than Rank IV. No funding is provided for any persons classified lower than Rank V. Notwithstanding the rank classification of the adjunct instructor, local school boards may contract with such certified adjunct instructors for part-time services on an hourly, daily, or other periodic basis as best meets the needs of the board.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 11:50 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche

(1) Type and number of entities affected: 180 local school districts, an undetermined number of applicants for certificates as adjunct instructors (probably less than 100 per year).

(a) Direct and indirect costs or savings to those affected: No appreciable change in cost of personnel administration.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No appreciable change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Department of Education staff must communicate information about the new statute and the implementing regulations to the 180 local school districts.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. The regulation is to implement a new statute.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None.

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 3:325. Effective Instructional Leadership Act.

RELATES TO: KRS 156.101
PURSUANT TO: KRS 156.070, 156.101
NECESSITY AND FUNCTION: KRS 156.101 requires the State Board of Education to establish specific criteria for implementing a statewide instructional leader improvement program for employees of the public schools holding valid certificates and performing the responsibilities as principal, assistant principal, supervisor of instruction, guidance counselor or director of special education. This regulation establishes and sets criteria for such a program.

Section 1. By July 14, 1986, and every two (2) years thereafter, each instructional leader employed by the public schools of the Commonwealth shall participate in an intensive and continuing training program of no less than forty-two (42) participant hours of instruction approved by the State Department of Education. Completion of the required participant hours shall be reported to the State Department of Education and to the local school district. Failure to participate shall result in a one (1) year probation. Should the training not be completed during the probationary period, it shall result in the loss of state funding for the Administrative and Special Instructional Services (ASIS) Unit in which the instructional leader is employed. In addition, those certified as instructional leaders on or after July 14, 1984, who fail to complete the training during the probationary period, shall have their administrative certificates revoked.

Section 2. (1) Participation in the program is required for all those certified as instructional leaders. Under the provisions of Accreditation Standards (Standard V, Compliance Indicator 5) and amendments to 704 KAR 3:035 (annual inservice education plan) local school districts are required to develop a plan for instructional leadership training as part of their Master Inservice Education Plan. Districts which do not ensure that their instructional leaders obtain the required participant hours shall be cited for an accreditation deficiency.

(2) Within the program criteria determined by the State Superintendent of Public Instruction, the approval of specific training for instructional leaders, as well as the selection of providers of such training shall be the responsibility of the superintendent of the local district.

Section 3. Instructional leaders shall participate in a training program designed to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth. The State Board of Education may approve agencies or institutions, defined hereinafter as providers, to design, implement, and evaluate such training. Training programs approved by the State Board of Education shall be:

(1) Intensive and designed specifically for instructional leaders. To meet this criterion, a program must be of at least twelve (12) participant hours' duration. Participation should occur during the period of extended employment. Participation shall occur during the school year for those not included in extended employment. Training should be scheduled so as to minimize disruption of the instructional program of the district. Participant hours exclude non-instructional time.

(2) Competency-based, specifying instructional leadership competencies to be mastered by participants. Competencies may have general applicability for instructional leaders or may be role-specific. The two (2) year (forty-two (42) participant hours) program for an individual instructional leader shall consist of a minimum of twenty-four (24) participant hours which are role-specific. Based on identified needs, the department may require specific training.

(3) Comprehensive in nature and shall meet identified needs. Needs shall be identified as described in the program content, Section 4 of this regulation. To meet the criterion of comprehensiveness, a program must contain the pertinent inter-related aspects of a broad competency area. This requirement shall not preclude approved subcontracting by providers for program components.

(4) Characterized by follow-up activities to document the application of acquired competencies. To the optimum extent possible, these activities should occur on the employment site.

(5) Evaluated in terms of program content, instructional processes, and impact upon participants. Specifically, participant application of competencies shall be verified by random sampling utilizing local school district provider, and participant data. Evaluation of the training shall include, but not be limited to, participant pre- and post-testing of the specific instructional leadership competencies.

Section 4. The training program content shall consist of specific competencies consistent with the following definition of instructional leadership: Instructional leadership is the process of encouraging and modeling appropriate academic expectations of students and teachers in a positive school climate. Although the affective, physical, and social needs of students are considered, the emphasis is upon cognitive development. The leadership competencies for the improvement of instruction for children and youth relate to an understanding of the teaching/learning process as well as to the supportive and evaluative functions of the instructional leader.

Section 5. Identification of needs will provide the basis for the definition of specific instructional leadership competencies to be addressed within the parameters of the above definition. The Department of Education shall conduct a state-wide assessment of the training needs of instructional leaders every two (2) years. The results will be provided to the local districts to be used in determining training program content. Local districts and cooperatives may supplement the state-wide assessment program.

Section 6. The provider of the training program shall:

(1) Develop programs which meet the criteria identified above;

(2) Select program faculty who have adequate, pertinent training/education, appropriate experience, and the ability to instruct effectively;

(3) Meet identified needs consistent with the definition of instructional leadership cited in Section 4 of this regulation;

(4) Determine eligible participants as identified by the superintendent of their LEA;

(5) Conduct training as set forth in its proposal and as approved by the Department of Education;

(6) Document participation of instructional leaders to the local district superintendent and the Superintendent of Public Instruction; and

(7) Evaluate the training in terms of its content, instructional processes and impact upon the professional behavior of participants.

Section 7. The State Board of Education, upon recommendation of the Superintendent of Public Instruction, shall approve training providers.

Section 8. (1) Approval shall be granted for a period of up to two (2) consecutive years. The Superintendent of Public Instruction may revoke such approval if the provider does not implement the approved training program.

(2) Determination of approval as a provider will be based upon:

(a) Specific program criteria;

(b) Program content addressing specified competencies of instructional leadership.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 11:50 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. James Fouche

(1) Type and number of entities affected: All 181 school districts and over 300 instructional leaders defined as principals, assistant principals, guidance counselors, supervisors of instruction and directors of special education.

(a) Direct and indirect costs or savings to those affected: The costs will be determined by the provider selected and the local districts' contributions.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Proposals from providers, reports, and verification of participation by instructional leaders.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Needs assessment process - Approximately $2,500.

2. Continuing costs or savings: Biennial needs assessment

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Recording participation of instructional leaders. Report to State Board recommending providers.

(3) Assessment of anticipated effect on state and local revenues: Local districts may choose to underwrite cost to participants.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposal is the most desirable alternative to the status quo.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No, There is a need for uniformity throughout the state for training of instructional leaders.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:290. Certification for early elementary level.

RELATES TO: KRS 161.020, 161.025, 161.030

PURSUANT TO: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate for teaching at the early elementary level and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) Effective July 1, 1986, the provisional certificate for teaching in the early elementary grades K-4 shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) The provisional certificate for teaching in the early elementary grades K-4 shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth-year program.

(3) The provisional certificate for teaching in the early elementary grades K-4 shall be valid for teaching in kindergarten and in grades one (1) through four (4).

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984

FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: Twenty-four (24) teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be some change-over costs in shifting resources from the "old" program to the development of a new program. Thereafter, the overall costs should be about the same.
2. Continuing costs or savings: Little or none after the change-over period.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Teacher education institutions must file descriptions of the new preparation program for middle grade teachers with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation proposed an alternative which is considered more desirable than the status quo.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:300. Adjunct instructor certificate.

RELATES TO: KRS 161.020, 161.025, 161.030, 161.046
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.046 establishes the position of adjunct instructor and directs the State Board of Education to establish implementing regulations; and KRS 161.020, 161.025, and 161.030 set forth the general certification authority of the state board. This regulation sets the minimum requirements for adjunct instructor certificates and sets forth the procedure for making a determination that qualified teachers with regular certificates are not available for positions that might be filled by adjunct instructors. Further provisions require the local school boards to involve adjunct instructors in an appropriate orientation program.

Section 1. (1) In order to comply with KRS 161.046 to establish the need for employing adjunct instructors, the superintendent of the local school district and the board of education shall make the following declaration to the Superintendent of Public Instruction on request forms supplied by his office:
(a) No qualified teachers have applied for the vacant position, and to our knowledge qualified teachers are not available for the position;
(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and, furthermore, the vacancy has been made known locally by appropriate means; and
(c) The local school district has been unsuccessful in recruiting teachers for the vacant position either from the listings of teachers supplied by the Department of Education or by means of the placement services of the teacher education institutions.
(2) The declaration of the unavailability of regularly certified and qualified teachers for a particular vacancy shall be sufficient to establish that there is a critical teacher shortage on a local district basis to satisfy the language of KRS 161.046.
(3) Adjunct instructors shall meet the requirements for minimum age and for good moral character as required in KRS 161.040. Adjunct instructors employed for departmentalized instruction in grades seven (7) through twelve (12) shall hold a bachelor's degree from a regionally accredited institution with an overall minimum grade point average of 2.5 and a major, minor, or area of concentration in the speciality subject to be taught with a minimum grade point average of 2.5. Adjunct instructors for the elementary grades kindergarten through eight (8) shall hold a bachelor's degree from a regionally accredited institution with a minimum overall grade point average of 2.5. Adjunct instructors for vocational education-industrial education shall be high school graduates and shall have at least four (4) years of appropriate occupational experience for the industrial education speciality to be taught.
(4) Adjunct instructors shall be certified and employed for only one (1) year at a time.
(5) The Superintendent of Public Instruction, depending upon the condition of teacher shortage and the qualifications of the applicant, shall approve or disapprove a request for certification as an adjunct instructor. The term of validity of the certificate for adjunct instructor may be limited to a period of less than the full school year;

however, the beginning date shall be no earlier than the date the request form is received in the Department of Education.

(6) An application form signed by the local district superintendent and approved by the local board of education shall be submitted for each adjunct instructor. The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any unusual competencies or experiences submitted in support of the application.

Section 2. Each local board of education shall provide for an orientation program for any adjunct instructors employed within the district. A description of the orientation program shall be a part of the certificate application form.

Section 3. For purposes of funding through the foundation law, an adjunct instructor shall be classified no higher than Rank IV. No funding is provided for any persons classified lower than Rank V. Notwithstanding the rank classification of the adjunct instructor, local school boards may contract with such certified adjunct instructors for part-time services on an hourly, daily, or other periodic basis as best meets the needs of the board.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 180 local school districts, an undetermined number of applicants for certificates as adjunct instructors (probably less than 100 per year).
(a) Direct and indirect costs or savings to those affected: No appreciable change in cost of personnel administration.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No appreciable change.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Department of Education staff must communicate information about the new statute and the implementing regulations to the 180 local school districts.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None. The regulation is to implement a new statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None.

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education

705 KAR 4:205. Vocational certificate of completion.

RELATES TO: KRS 158.140
PURSUANT TO: KRS 156.070, 158.140, 163.030
NECESSITY AND FUNCTION: KRS 158.140 establishes a vocational certificate of completion and directs the Department of Education to prescribe the requirements for such a certificate. This regulation establishes such requirements.

Section 1. The Office of Vocational Education shall provide to each school district offering preparation vocational programs in compliance with the Kentucky Program of Studies a list of the specific competencies for completion of a major DOT for each specific occupational preparation program offered at the secondary level.

Section 2. Any secondary student shall be awarded a standardized competency certificate who has earned a minimum of four (4) credits in the occupational area and who has successfully obtained the competencies identified for a major DOT in the specific occupational preparation program.

Section 3. Said certificates shall be awarded commencing with the close of the spring semester 1985.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Carr
(1) Type and number of entities affected: Local school districts (180) offering secondary vocational opportunities

at the prep. level and approximately 100 AVEC/SVTS offering secondary programs

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Minor increase for those districts awarding the vocational certificate

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Minor costs for preparing and printing standardized certificate for each district to use a master for each occupational area

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

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

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Required by action of the 1984 General Assembly

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education

705 KAR 7:070. Minimum standards of admission for long-term adult students in vocational programs.

RELATES TO: KRS 163.030
PURSUANT TO: KRS 156.070, 163.030
NECESSITY AND FUNCTION: KRS 163.030 vests the State Board of Education with authority to carry out the purposes of the state's vocational education program and adopted federal acts relative thereto. The purpose of this regulation is to establish minimum entrance requirements for students entering vocational programs, to establish a base for determining if students may receive advanced placement, to assist in developing remedial plans for students who need help in meeting minimum admission requirements, and to determine if a student needs additional assessment.

Section 1. The following minimum requirements shall apply to those schools offering training to students who have graduated or left high school and are enrolled in an occupational preparation program of 500 hours or more in length that does not lead to an associate degree:

(1) Students enrolling in a vocational school postsecondary program must be sixteen (16) years of age or older;

(2) Students enrolling must have successfully completed requirements for a high school diploma or its equivalent. Students who do not possess a high school diploma or its equivalent may be admitted with special status provided the student agrees to pursue the high school equivalency certificate;

(3) Students enrolling must complete an application form and provide a transcript of previous school work completed, including scale scores on the California Test of Basic Skills (CTBS) if taken in the last three (3) years;

(4) Students enrolling who do not have a transcript and/or CTBS scale scores must take the Test of Adult Basic Education (TABE). Students not having acceptable CTBS scale scores for program admission may take the TABE;

(5) Students may be admitted to the school upon completion of application, required records, and test results and may pursue instruction in a basic academic skills program, career exploration, and core elective courses; and

(6) The Kentucky Department of Education does not discriminate on the basis of race, color, national origin, marital status, age, sex, or handicap.

Section 2. Students who have been admitted to the school must meet admission standards for the occupational program. The following minimum requirements shall apply to all students:

(1) Scale scores from California Test of Basic Skills (CTBS), Form U, or Test of Adult Basic Education (TABE), Form D, will be used in program placement and in developing a plan for students who need help in remedial work to meet minimum program admission requirements.

(2) Students must have the following scale scores for admission to a vocational program not otherwise mentioned:

	CTBS	TABE
Reading	725	479
Math	717	504

Students who score below said minimum will be referred to the Learning Resource Center prior to admission to the program. Students achieving the minimum basic skills in the Learning Center will be admitted to the program when a work station is available.

(3) Students who have the following scale scores must be enrolled in math and reading programs at the school to improve their skills. Enrollment may be concurrent with or prior to enrollment in the program.

	CTBS	TABE
Reading	725 to 770	479 to 574
Math	717 to 732	504 to 581

(4) Students enrolling in Air Craft Mechanics, Biomedical Technician, Electronics, Instrumentation, and Drafting must have the following scale scores to be admitted to the program:

	CTBS	TABE
Reading	753	542
Math	726	544

(5) Students enrolling in Practical Nursing, Radiologic Technology, Respiratory Therapy, Surgical Technology, and Civil and Highway Technology must have the following scale scores to be admitted to the program:

	CTBS	TABE
Reading	770	574
Math	732	581

(6) Students enrolling in Biomedical Equipment Technician, Medical Assistant, Mine Maintenance, Practical Nurse, Radiologic Technology, Respiratory Therapy, and Surgical Technology must be seventeen (17) years of age or older.

(7) Students enrolling in Heavy Equipment Operator, Heavy Equipment Maintenance, and Mine Equipment Operator must be eighteen (18) years of age or older.

(8) Students enrolling in Mine Equipment Operator must be certified miners.

(9) Students enrolling in Heavy Equipment Operator and Heavy Equipment Maintenance must have a valid driver's license.

Section 3. The following minimum requirements shall apply to those students requesting to transfer credit and be admitted with advanced standing from other vocational schools or other institutions accredited by an educational agency recognized by the Kentucky Department of Education:

(1) The student must supply the name and address of all previous institutions that provided vocational training;

(2) The student must provide a record of competencies achieved, length of training, date of enrollment, and date of termination from each institution. The receiving school may validate competencies through testing and interviewing; and

(3) The student must provide all records and reports which are required by the state boards and/or licensing agencies in a given vocational program.

Section 4. This regulation shall be effective on a pilot basis for Rowan State Vocational-Technical School and the Northern Kentucky State Vocational-Technical School during the 1984-85 school year, but shall be effective for all state-operated vocational schools in the 1985-86 school year and thereafter.

ALICE McDONALD
Superintendent of Public Instruction

ADOPTED BY AGENCY: July 10, 1984
FILED WITH LRC: July 13, 1984 at 11:50 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 29, 1984, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 24, 1984. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Melissa Briscoe
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Request to supply CTBS test results if available
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: 1984-85: None. 1985-86: Purchase of copies of Test of Adult Basic Education (TABE) will increase operating cost in vocational schools
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None other than those already in place
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 4:250. Special temporary licenses.

RELATES TO: KRS 243.260, 243.290
PURSUANT TO: KRS 241.060
NECESSITY AND FUNCTION: KRS 243.260 provides for the issuance of a distilled spirits and wine special temporary license to any regularly organized fair, exposition, racing association or other party, "when in the opinion of the board a necessity therefor exists." KRS 243.290 provides for the issuance of a malt beverage special temporary license for any regularly organized fair, race or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars and carnivals subject to regulations. This regulation is adopted to insure consistency in the issuance of these special temporary licenses and insure the legal use thereof.

Section 1. All applications for special temporary licenses pursuant to KRS 243.260 or 243.290 shall be on forms provided by the Department of Alcoholic Beverage Control and shall be filed with the department no later than fifteen (15) days prior to the date for which license is requested.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 and 243.290 shall provide by a sworn affidavit such supplemental information as the Alcoholic Beverage Control Board shall deem necessary for proper review of the application.

Section 3. For purposes of the issuance of special temporary license pursuant to KRS 243.260 and 243.290, necessity in the opinion of the board shall limit applicants to: any regularly organized fair, exposition, racing association or non-profit organization, or any for-profit individual, corporation, or organization when used in conjunction with an organized charitable, civic, or community sponsored event.

EDWARD A. FARRIS
Commissioner-Chairman

APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 11, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing

on the above proposed regulation will be held on Thursday, August 23, 1984, at 10 a.m. in the hearing room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Those who may be interested in attending, please contact: Bonnie H. Hall, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward A. Farris
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. Not applicable.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 9:050. Retail drink liquor license quota.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030
PURSUANT TO: KRS 241.060
NECESSITY AND FUNCTION: The express provisions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.

Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by regulation retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivision. In such instances, the quota set in 804 KAR 9:010, Section 1(1) and (2), shall be inapplicable. The quota exceptions contained in 804 KAR 9:010, Section 2(1), (2), (3), and (4), shall remain in effect and be incorporated herein.

Section 2. Pursuant to the authority herein, the City of Pikeville, having been elevated to third class status by the 1984 session of the Kentucky General Assembly, the actual resident population of the City of Pikeville being at least 8,000 by virtue of its reclassification to a city of the third class and the resident population of Pike County being 86,307 according to the population projections of the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Kentucky, it is determined that the retail drink liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail drink liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail drink liquor license quota for the City of Pikeville, Kentucky, is therefore set at eleven (11).

EDWARD A. FARRIS
Commissioner-Chairman
APPROVED BY AGENCY: July 11, 1984
FILED WITH LRC: July 11, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on the above proposed regulation will be held on Thursday, August 23, 1984, at 10 a.m. in the hearing room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Those who may be interested in attending, please contact: Bonnie H. Hall, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward A. Farris
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. Not applicable.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 12:100. Mass merchandising of motor vehicle insurance.

RELATES TO: KRS 304.1-020, 304.9-020, 304.9-080, 304.9-090, 304.12-020, 304.12-080, 304.12-210, 304.13-051, 304.14-120, 304.20-020, 304.20-040, 304.39-020, 304.39-060, 304.39-080, 304.39-100, 304.39-140, 304.39-150, 304.39-320

PURSUANT TO: KRS Chapter 13A, 304.2-110, 304.39-300

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.39-300 provides that the Commissioner of Insurance may adopt regulations to provide effective administration of the Kentucky Motor Vehicle Reparations Act. This regulation establishes guidelines for mass merchandising motor vehicle insurance in order to obtain and preserve for Kentucky insureds the benefits which may be derived from the mass merchandising of motor vehicle insurance.

Section 1. Scope. This regulation is in addition to, and not a substitution for, other applicable requirements of the Kentucky Insurance Code and regulations. This regulation does not apply to group life insurance or group health insurance or to marketing methods other than mass merchandising as defined in Section 2 of this regulation.

Section 2. Definitions. As used in this regulation: (1) "Agent" has the meaning set forth in KRS 304.9-020.

(2) "Eligible group" means any organization or association of persons which has not been organized principally for the purpose of obtaining insurance under a mass merchandising plan. An eligible group may consist of members of a union, employees of a common employer, members of an association, and the like, or any class or classes thereof, as determined by the conditions pertaining to employment or membership. Any such association must have been in existence for at least two (2) years prior to the purchase of insurance under a mass merchandising plan.

(3) "Eligible member insured" means an eligible member of an eligible group who is provided insurance coverage under a mass merchandising plan.

(4) "Eligible members" means all the employees or members in good standing of an eligible group.

(5) "Employees" means all active employees of a common employer, including proprietors, partners, and directors, who are engaged in at least thirty (30) hours of employment per week. The term may apply to one (1) or more subsidiaries or affiliates.

(6) "Group motor vehicle insurance" means all motor vehicle insurance issued to an eligible group for the benefit of the eligible members thereof, under a single insurance program, without individual underwriting, on a guaranteed issue basis, subject to the provisions of Section 4 of this regulation.

(7) "Mass merchandising" means the marketing of motor vehicle insurance through the sponsorship and assistance of an eligible group for the benefit of the eligible members thereof.

(8) "Motor vehicle" has the meaning set forth in KRS 304.39-020.

(9) "Person" has the meaning set forth in KRS 304.1-020.

(10) "Nongroup motor vehicle insurance" means all motor vehicle insurance issued to individual members of an eligible group, with individual underwriting for determination of proper premium rates, on a guaranteed issue basis, subject to the provisions of Section 5 of this regulation.

Section 3. Rates, Forms, and Coverage. All motor vehicle insurance sold through mass merchandising shall:

(1) Have rates for such insurance filed with the Commissioner of Insurance pursuant to KRS 304.13-051;

(2) Have coverage forms filed and approved pursuant to KRS 304.14-120 and 304.39-150; and

(3) Provide motor vehicle insurance coverage in conformity with KRS Chapter 304.39, provide uninsured motorists coverage in conformity with KRS 304.20-020, and underinsured motorists coverage in conformity with KRS 304.39-320.

Section 4. Mass Merchandising of Group Motor Vehicle Insurance. Group motor vehicle insurance may be issued in this state under a mass merchandising plan provided the following conditions are complied with:

(1) At the inception date of the group mass merchandising plan, the group must consist of at least fifty (50) eligible members of which at least fifty (50) percent of said eligible members must agree in writing to participate in the mass merchandising plan at the expiration of existing insurance. At all times thereafter at least fifty (50) percent of all eligible members must participate in the mass merchandising plan.

(2) Insurance coverage must be provided to all eligible members of the eligible group desiring to participate in the mass merchandising plan, unless at least one (1) of the reasons for cancellation or nonrenewal permissible under KRS 304.20-040 is known to exist.

(3) Each eligible member insured must be issued the same form of policy, varying only as to the amounts of insurance coverage and limits of liability. However, uniform limits for bodily injury and property damage liability coverages and basic reparation benefits coverage may be established and uniform comprehensive, collision and other supplemental coverages may be made optional.

(4) Insurance must be provided either by individual policies, or individual certificates issued under a master policy and subject to the same terms and conditions as contained therein, to each subscribing member of the group.

Section 5. Mass Merchandising of Nongroup Motor Vehicle Insurance. Nongroup motor vehicle insurance may be issued in this state under a mass merchandising plan under the following conditions:

(1) All subscribing members must be eligible members of an eligible group, but the provisions of Section 4(1) of this regulation regarding the minimum number of eligible members and percentage of participation shall not apply to mass merchandising of nongroup motor vehicle insurance.

(2) Insurance coverage must be provided to all eligible members of the eligible group desiring to participate in the mass merchandising plan at a premium rate based on the applicant's proper classification unless at least one (1) of the reasons for cancellation or nonrenewal permissible under KRS 304.20-040 is known to exist.

(3) Insurance must be provided by individual policies delivered to each subscribing member.

Section 6. Cancellation and Nonrenewal. Insurance coverage provided an eligible member insured under a mass merchandising plan may be cancelled or nonrenewed pursuant to the terms of the insurance contract but only in conformity with KRS 304.20-040.

Section 7. Continuation and Conversion. (1) Every policy of mass merchandised motor vehicle insurance shall contain a provision that if the eligible member insured's employment or membership in the eligible group is terminated for any reason or if the mass merchandising plan is terminated for any reason, the eligible member insured shall be entitled to continue his insurance coverage at the then existing premium rate for thirty (30) days after termination of the insurance pursuant to KRS 304.20-040 upon payment of the premium therefor. Thereafter, the insurer, or one (1) of its affiliates, if any, shall provide the eligible member insured an individual policy affording the same or similar coverage providing application and payment of the premium therefor are tendered within the thirty (30) day period provided above, and providing that such eligible member insured is qualified for insurance coverage under any insurance program currently filed by the insurer or any of its affiliates with the Kentucky Department of Insurance. If such person is not so eligible for insurance coverage with the insurer or its affiliates, the insurer shall render to him all reasonable assistance to obtain insurance from other sources, including, where applicable, making available and assisting in the processing of an application for the Kentucky Automobile Insurance Plan, if so desired by the applicant.

(2) Insurers writing insurance under mass merchandising plans shall provide written notice reasonably intended to inform eligible member insureds of their rights under this section. The notice shall be provided at the time any notice required by KRS 304.20-040 is given. At the option of the insurer, the notice may be given at other times.

(3) The failure of the eligible member insured to exercise his continuation or conversion privileges under this section shall be treated as a voluntary termination of the coverage by the eligible member insured.

Section 8. Maintenance of Records. Every insurer writing insurance under mass merchandising plans shall keep and maintain separate statistics for each classification of insurance within such plans, including, but not limited to, complete records of premium income, losses and expenses, and adding thereto appropriate expense factors for acquisition, advertising, tax liabilities, legal, accounting, data processing, and research and development expense. Said statistics from each of the above-listed factors shall be used to promulgate the premium rates and rating plans and to insure that the costs of mass merchandising plans are in no way transferred to the rates of individuals who are not insured under such plans.

Section 9. Agents. No person shall act as an insurance agent in connection with any mass merchandising plan for motor vehicle insurance unless such person is duly licensed as an insurance agent for motor vehicle insurance. For the purposes of this regulation, the following activities, if performed by the sponsoring eligible group, shall not require an insurance agent's license:

(1) Collection and remittance of premium.

(2) Distribution to eligible members of insurer-prepared information pertaining to the mass merchandising plan.

(3) Administrative services in connection with the mass merchandising plan.

Section 10. Compulsory Participation Prohibited. No employee or member shall be subject to any penalty, coercion, intimidation, or be discriminated against because of nonparticipation in any mass merchandising plan.

Section 11. Tie-in Sales Prohibited. No insurer or agent shall sell insurance pursuant to a mass merchandising plan if the purchase of insurance available under such plan is contingent upon the purchase of any other insurance, product, or service, or if the purchase or price of any other insurance, product, or service is contingent upon the purchase of insurance available under such plan.

Section 12. Disclosure Required. Every insurer or agent selling insurance pursuant to a mass merchandising plan shall, prior to sale, provide full and fair disclosure to all prospective eligible member insureds of all essential features of such plan, whether favorable or unfavorable, including, but not limited to, premium rates, benefits, duration of coverage, continuation and conversion privileges and policyholder services.

Section 13. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 14. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

GIL McCARTY, Commissioner
M. H. WILSON, Secretary

APPROVED BY AGENCY: July 9, 1984

FILED WITH LRC: July 12, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on the proposed regulation will be held on August 21, 1984, at 11 a.m. in the offices of the Department of Insurance, 229 West Main Street, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Gil McCarty, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Persons may submit written comments to the above address.

REGULATORY IMPACT ANALYSIS

Contact Person: Patrick Watts, Counsel, (502) 564-6036

Need For the Proposed Regulation: The proposed regulation is necessary to provide guidelines for the sale and issuance of group automobile insurance and other forms of mass merchandised automobile insurance. This type of insurance is permitted under HB 290 (1984 Ky. Acts c. 140, eff. July 13, 1984) adopted by the 1984 General Assembly. The proposed regulation establishes the requirements a group must meet in order to participate in the mass merchandising of group or non-group automobile insurance. The proposed regulation further establishes guidelines for the cancellation and nonrenewal of mass merchandised automobile insurance coverage, continuation and conversion of mass merchandised automobile insurance coverage, and prescribes certain guidelines relating to trade practices. The proposed reglation is similar to Regulation 72-8 of the Colorado Department of Insurance.

Type and Number of Entities Affected: The proposed regulation will affect the approximately 500 insurers authorized to write motor vehicle insurance in Kentucky, although not all of these insurers will be interested in the mass merchandising of motor vehicle insurance. The proposed regulation will also affect the approximately 9,500 insurance agents licensed to sell motor vehicle insurance in Kentucky, both as an additional product they can sell or as a product sold in competition with them. Lastly, the proposed regulation will make mass merchandised motor vehi-

cle insurance available to employers, associations, and other groups.

1. Direct and Indirect Cost or Savings to Those Affected: The proposed regulation should not impose costs on insurers that they will not meet merely because they are engaged in mass merchandising motor vehicle insurance. In fact, the proposed regulation may bring about savings because it establishes guidelines for insurers to rely on.

2. Reporting and Paperwork Requirements: Motor vehicle insurance contracts sold through mass merchandising must be approved by the commissioner before they can be used in Kentucky. Section 8 of the proposed regulation requires insurers to maintain certain records to assure that the costs of mass merchandising motor vehicle insurance are not passed on to those not insured under such plans.

Effects on the Promulgating Administrative Body: The proposed regulation will give the department guidelines to use in reviewing mass merchandising plans. The mass merchandising of motor vehicle insurance will create some additional paperwork for the department, but this is caused by HB 9, not by the proposed regulation.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons Why Alternatives Were Rejected: HB 290 merely legalized the mass merchandising of motor vehicle insurance. Without appropriate guidelines, insurers will not know how to transact this kind of insurance under the Kentucky insurance laws and regulations.

Statutes, Rules, Regulations, or Governmental Policies Which May Conflict, Overlap, or Duplicate the proposed regulation: None

Tiering

Tiering has been applied in that different rules are used for group and non-group mass merchandised motor vehicle insurance. In all other respects, all insurers must meet the same rules in selling and issuing this type of product.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 15:030. Variable life insurance.

RELATES TO: KRS 304.2-100, 304.7-240, 304.12-020, 304.12-030, 304.14-120, 304.15-115, 304.15-390

PURSUANT TO: KRS Chapter 13A, 304.2-110, 304.15-390

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.15-390 authorizes the Commissioner of Insurance to make regulations controlling the sale and issuance of variable contracts. This regulation establishes guidelines for the sale and issuance of variable life insurance.

Section 1. Definitions. As used in this regulation:

(1) "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

(2) "Agent" means any person, corporation, partnership, or other legal entity which is licensed by this state as a life insurance agent.

(3) "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

(4) "Benefit base" means the amount to which the net investment return is applied.

(5) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(6) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten (10) percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(7) "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in subsection (15) of this section.

(8) "General account" means all assets of the insurer other than assets in separate accounts established pursuant to KRS 304.15-390 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

(9) "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

(10) "May" is permissive.

(11) "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

(12) "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

(13) "Person" has the meaning specified in KRS 304.1-020, and also includes a fund.

(14) "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

(15) "Scheduled premium policy" means any variable life insurance policy under which both the amount and tim-

ing of premium payments are fixed by the insurer.

(16) "Separate account" means a separate account established pursuant to KRS 304.15-390 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

(17) "Shall" is mandatory.

(18) "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

(19) "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to KRS 304.15-390 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Section 2. Qualification of Insurer to Issue Variable Life Insurance. The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

(1) Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable life insurance policies unless:

(a) The insurer is licensed or organized to do a life insurance business in this state;

(b) The insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after he has found that:

1. The plan of operation for the issuance of variable life insurance policies is not unsound;

2. The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

3. The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:

a. The history of operation and financial condition of the insurer;

b. The qualifications, fitness, character, responsibility, reputation and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

c. The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

d. If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

(2) Filing for approval to do business in this state. The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with the commissioner the following information for the consideration of the commissioner in making the determination required by subsection (1) of this section:

(a) Copies of and a general description of the variable life insurance policies it intends to issue;

(b) A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distributive services to the insurer;

(c) With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(d) A description of any investment advisory services contemplated as required by Section 5(10) of this regulation;

(e) A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

(f) Biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form; and

(g) A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

(3) Standards of suitability. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards of suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation.

(4) Use of sales materials. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate.

(5) Requirements applicable to contractual services. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with an information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations, and any other applicable law or regulations.

(6) Reports to the commissioner. Any insurer authoriz-

ed to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this regulation or any other applicable laws or regulations:

(a) An annual statement of the business of its separate account or accounts in such forms as may be prescribed by the National Association of Insurance Commissioners; and

(b) Prior to use in this state any information furnished to applicants as provided for in Section 6 of this regulation; and

(c) Prior to use in this state the form of any of the reports to policyholders as provided for in Section 8 of this regulation; and

(d) Such additional information concerning its variable life insurance operations or its separate accounts as the commissioner may deem necessary.

Any material submitted to the commissioner under this section shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

(7) Authority of commissioner to disapprove. Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found by him not to comply with the standards established in this regulation.

Section 3. Insurance Policy Requirements. The commissioner shall not approve any variable life insurance form filed pursuant to this regulation unless it conforms to the requirements of this article.

(1) Filing of variable life insurance policies. All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to be made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him prior to delivery or issuance for delivery in this state.

(a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this regulation, the same as those otherwise applicable to other life insurance policies.

(b) The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this regulation.

(2) Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

(a) Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

(b) For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of Section 4(4)(b) of this regulation);

(c) The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

(d) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

(e) Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

(f) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values to the minimum values required by KRS 304.6-130 to 304.6-180 (standard valuation law) for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the standard valuation law. If the policy does not contain an assumed investment rate this demonstration shall be based on the maximum interest rate permitted under the standard valuation law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

(g) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

(3) Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

(a) The cover page or pages corresponding to the cover page of each such policy shall contain:

1. A prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions;

2. A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

3. A statement describing any minimum death benefit required pursuant to subsection (2)(b) of this section;

4. The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

5. To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten (10) days of receipt of the policy by the policyholder, and receive a refund equal to the sum of:

a. The difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy; and

b. The value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund shall be the total of all premium payments for such policy.

6. Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this regulation.

(b) 1. For scheduled premium policies, a provision for a grace period of not less than thirty-one (31) days from the premium due date which shall provide that when the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

2. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than sixty-one (61) days after the mailing date of the report to policyholders required by Section 8(3) of this regulation. The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three (3) times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

(c) For scheduled premium policies, a provision that the policy will be reinstated at any time within two (2) years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

1. All overdue premiums with interest at a rate not exceeding eight (8) percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight (8) percent per annum compounded annually; or

2. 110 percent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight (8) percent per annum compounded annually.

(d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

(e) A provision designating the separate account to be used and stating that:

1. The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

2. The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

(f) A provision specifying what documents constitute the entire insurance contract under state law;

(g) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representations and not warranties;

(h) An identification of the owner of the insurance contract;

(i) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

(j) A statement of any conditions or requirements concerning the assignment of the policy;

(k) A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;

(l) A provision that the policy shall be incontestable by the insurer after it has been in force for two (2) years during the lifetime of the insured, but any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after any such increase has been in force, during the lifetime of the insured, for two (2) years from the date of issue of such increase;

(m) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state;

(n) A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

1. For up to six (6) months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or

2. Otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

(o) If settlement options are provided, at least one such option shall be provided on a fixed basis only;

(p) A description of the basis for computing the cash value and the surrender value under the policy shall be included;

(q) Premiums or charges for incidental insurance benefits shall be stated separately;

(r) Any other policy provision required by this regulation;

(s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this regulation;

(t) A provision for non-forfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any non-forfeiture insurance options will not be available.

(4) Policy loan provisions. Variable life insurance policies subject to this regulation which provide for policy loans shall contain a policy loan interest rate provision which complies with KRS 304.15-115.

(5) Other policy provisions. The following provisions may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

(a) An exclusion for suicide within two (2) years of the

issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two (2) years of any increase in death benefits which result from an application of the owner subsequent to the policy issue date;

(b) Incidental insurance benefits may be offered on a fixed or variable basis;

(c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

1. The amount of the dividend may be credited against premium payments;

2. The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

3. The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

4. The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one (1) year term insurance;

5. The amount of the dividend may be deposited as a variable deposit in a separate account.

(d) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subsection (4) of this section, except that a restriction that no more than two (2) consecutive premiums can be paid under this provision may be imposed;

(e) A provision allowing the policyholder to make partial withdrawals;

(f) Any other policy provision approved by the commissioner.

Section 5. Separate Accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

(1) Establishment and administration of separate accounts. Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to KRS 304.15-390.

(a) If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have the authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(b) Such insurer shall not without prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:

1. Within the last ten (10) years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342, or 1343 of Title 18, United States Code; or

2. Within the last ten (10) years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

3. Within the last ten (10) years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

(c) All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than:

Total Assets Under $100,000		Minimum Amount of Bond $10,000			
More Than:	But Not More Than:				
$ 100,000	$ 600,000	$ 10,000	plus	4% of assets over	$ 100,000
600,000	1,200,000	30,000	plus	3 1/3% of assets over	600,000
1,200,000	3,200,000	50,000	plus	3 1/2% of assets over	1,200,000
3,200,000	4,450,000	100,000	plus	2% of assets over	3,200,000
4,450,000	6,450,000	125,000	plus	1 1/4% of assets over	4,450,000
6,450,000	90,450,000	150,000	plus	5/8% of assets over	6,450,000
90,450,000	350,450,000	675,000	plus	3/8% of assets over	90,450,000
50,450,000	1,070,450,000	1,625,000	plus	3/16% of assets over	350,450,000
70,450,000		3,075,000	plus	3/32% of assets over	1,070,450,000

(d) The assets of such separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

(2) Amounts in the separate account. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

(3) Investments by the separate account.

(a) No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless:

1. In case of transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

2. Such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

(b) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

(4) Limitations on owernship.

(a) A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulations, would exceed ten (10) percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

(b) No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts in the aggregate, will own more than ten (10) percent of the total issued and outstanding voting securities of such issuer. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

(c) The percentage limitation specified in paragraph (a) of this subsection shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subsection (3) of this section and other applicable portions of the regulation.

(5) Valuation of separate account assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(6) Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under Section 2(2) of this regulation shall not be changed without first filing such change with the commissioner.

(a) Any change filed pursuant to this section shall be effective sixty (60) days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such sixty (60) day period of his disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this section.

(b) The commissioner may disapprove the change if he determines that the change would be detrimental to the interests of the policyholders participating in such separate accounts.

(7) Charges against separate account. The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including but not limited to the following:

(a) Taxes or reserves for taxes attributable to investment gains and income of the separate account;

(b) Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(c) Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

(d) Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

(e) A charge, at a rate specified in the policy, for mortality and expense guarantees;

(f) Any amounts in excess of those required to be held in the separate accounts;

(g) Charges for incidental insurance benefits.

(8) Standards of conduct. Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under he Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this section.

(9) Conflicts of interest. Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

(10) Investment advisory services to a separate account. An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate account maintained for variable life insurance policies unless:

(a) The person providing such advice is registered as an investment advisor under the Investment Advisor Act of 1940; or

(b) The person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

(c) The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

1. The name and form of organization, state of organization, and its principal place of business;

2. The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

3. A written standard of conduct complying in substance with the requirements of subsection (8) of this section which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

4. A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

a. Has been convicted within ten (10) years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of United States Code;

b. Has been permanently or temporarily enjoined by an order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

c. Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

d. Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

(d) Such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty (60) days' written notice to the investment advisor.

(e) The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

Section 6. Information Furnished to Applicants. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for such policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of this section shall be deemed to have been satisfied to the extent that a disclosure containing information required by this section is delivered, either in the form of: a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities Exchange commission; or all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2)thereof.

(1) A summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by Sections 3(3)(a)5 and 3(3)(f) of this regulation.

(2) A statement of the investment policy of the separate account, including:

(a) A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

(b) Any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted.

(3) A statement of the net investment return of the separate account for each of the last ten (10) years or such lesser period as the separate account has been in existence.

(4) A statement of the charges levied against the separate account during the previous year.

(5) A summary of the method to be used in valuing assets held by the separate account.

(6) A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary.

(7) Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

Section 7. Applications. The application for a variable life insurance policy shall contain:

(1) A prominent statement that the death benefit may be variable or fixed under specified conditions;

(2) A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees); and

(3) Questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

Section 8. Reports to Policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

(1) Within thirty (30) days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, any optional payments allowed pursuant to Section 3(4) of this regulation under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty (30) days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty (60) days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement

shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one (1) year from the end of the period covered by the report assuming that:

(a) Planned periodic premiums, if any, are paid as scheduled;

(b) Guaranteed costs of insurance are deducted; and

(c) The net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next twelve (12) months unless additional premium is paid.

(2) Annually, a statement or statements including:

(a) A summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

(b) The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five (5) years when available;

(c) A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

(d) Any charges levied against the separate account during the previous year;

(e) A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

(3) For flexible premium policies, a report must be sent to the policyholder in the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

Section 9. Foreign Companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by these regulations, the commissioner to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with this regulation.

Section 10. Qualifications of Agents for the Sale of Variable Life Insurance. No person shall be or act as an agent for the solicitation or sale of variable life insurance except while duly appointed and licensed under the Kentucky Insurance Code as a life insurance agent with respect to the insurer, and while meeting federal law requirements for dealing in securities.

Section 11. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 12. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

GIL McCARTY, Commissioner
M. H. WILSON, Secretary

APPROVED BY AGENCY: July 9, 1984

FILED WITH LRC: July 12, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on the proposed regulation will be held on August 21, 1984, at 9 a.m. in the offices of the Department of Insurance, 229 West Main Street, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the hearing: Gil McCarty, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Persons may submit written comments to the above address.

REGULATORY IMPACT ANALYSIS

Contact Person: Patrick Watts, Counsel, (502) 564-6036

Need For the Proposed Regulation: The proposed regulation establishes guidelines for the sale and issuance of variable life insurance. Variable life insurance is a form of life insurance under which the benefits vary with the investment performance of a separate account or accounts. The proposed regulation is substantially identical to the National Association of Insurance Commissioners Model Regulation on Variable Life Insurance, which is in effect in several other states.

Type and Number of Entities Affected: The proposed regulation has the potential to affect all of the approximately 545 insurers authorized to write life insurance in Kentucky. However, the proposed regulation will actually affect the twenty to thirty life insurers actively writing variable life insurance in Kentucky. At this time, only foreign insurers are engaged in writing variable life insurance in Kentucky. Those insurers are writing variable life insurance pursuant to regulations adopted in their home states. Those regulations are similar to the proposed regulation, and, therefore, the proposed regulation will have little impact upon the operations of those foreign insurers. One domestic insurer has expressed its intention to write variable life insurance.

1. Direct and Indirect Cost or Savings to Those Affected: The proposed regulation should not impose any significant cost upon foreign insurers currently writing variable life insurance in Kentucky. Those insurers continue to write variable life insurance under the regulations of their home state. As long as those regulations are substantially similar to the proposed regulation, no new procedures will be imposed upon them. See Section 9 of the proposed regulation. The proposed regulation will provide guidelines for the one domestic insurer which plans to write variable life insurance.

2. Reporting and Paperwork Requirements: The proposed regulation imposes significant reporting and paperwork requirements which are commensurate with the complexity of the variable life insurance product. However, foreign insurers writing variable life insurance in Kentucky are providing these types of reports and paperwork pursuant to the regulations of their home states. Thus, the ac-

tual impact of these reporting and paperwork requirements is minimal.

Effects on the Promulgating Administrative Body: The proposed regulation gives the commissioner the authority to prohibit an insurer from doing variable life insurance business in Kentucky or to disapprove a variable life insurance contract. However, the authority to approve and disapprove variable life insurance contracts is currently exercised by the commissioner pursuant to KRS 304.14-120. Thus, the only significant duty created by the proposed regulation is to review the variable life insurance operations of an insurer.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons Why Alternatives Were Rejected: If domestic insurers are going to establish separate accounts for use in the sale and issuance of variable life insurance, the proposed regulation is necessary. Domestic insurers cannot take these steps without the appropriate guidance from the Department.

Statutes, Rules, Regulations, or Governmental Policies Which May Conflict, Overlap, or Duplicate the proposed regulation: None

Tiering

Tiering is applied in the sense that different types of variable life insurance contracts are recognized, e.g., scheduled premium as opposed to flexible premium. Also, insurers are given an option in providing certain information, e.g., if the prospectus required by the Securities and Exchange Commission is adequate, there need be no separate disclosure to consumers. However, the proposed regulation does establish the minimum requirements to sell and issue variable life insurance in Kentucky. There is no basis on which to allow some insurers to escape these minimum requirements.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Building Codes Enforcement

815 KAR 7:080 Licensing of fire protection sprinkler contractors.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.555
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required to adopt regulations for the administration of a Fire Protection Sprinkler Contractor's Law. This regulation establishes the qualifications, responsibilities, procedures and fees for licensing such contractors.

Section 1. Responsibilities of the Commissioner. The commissioner shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this regulation. He shall conduct investigations upon complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or this regulation.

Section 2. Applicability. (1) This regulation applies to all firms and persons who engage in he business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of any fire protection sprinkler system.

(2) Exceptions: This regulation shall not apply to:

(a) Professional engineers in the preparation of plans or construction inspections pursuant to KRS Chapter 322;

(b) Building officials, fire marshals or fire inspectors and insurance inspectors;

(c) Persons installing limited area sprinkler systems served by a domestic water supply consisting of ten (10) sprinkler heads or less in one (1) structure;

(d) Persons working under the direct supervision of a certificate holder.

(e) Persons performing routine examination of existing suppression systems for purposes of determining if the system is operational.

Section 3. Definitions. (1) "Department" means the Department of Housing, Buildings and Construction.

(2) "Certificate of competency" is the certificate of registration issued by the department to an individual certificate holder who has passed the requirements of the department as set forth in Section 4 of this regulation which authorizes a fire protection sprinkler contractor to obtain a license to engage in business as defined in subsection (5) of this section.

(3) "Certificate holder" is an individual who has satisfactorily met and has received a certificate of compentency and who serves as employee, owner, partner, or officer of a fire protection sprinkler contractor and prepares technical drawings, performs or supervises the installation, repair, alteration, addition, maintenance or inspection of a fire protection sprinkler system.

(4) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(5) "Fire protection sprinkler contractor" means a person or firm engaged in the business of preparing technical drawings, installation, repair, alteration, exterior maintenance or inspection of fire protection sprinkler systems and has in his employment a certificate holder.

(6) "Fire protection sprinkler system" is a system of piping for which technical drawings have been prepared by or preparation supervised by a certificate holder in accordance with fire protection engineering standards. The system is supplied from a reliable, constant and sufficient water, gas or chemical supply, such as a gravity tank, fire pump, reservoir or pressure tank, or connection by underground piping to a city, county, municipal water district, authorized water main or both. The sprinkler system is considered the fire protection sprinkler system for purposes of this Act, and is a network of specially sized or hydraulically designed piping installed overhead and underground in a building, structure, or area, and to which sprinklers are connected in systematic pattern. The system includes a controlling valve and a device for actuating an alarm when a system is in operation. The system is activated by heat from a fire and causes the discharge of water, gas or chemical over the fire area. Fire protection sprinkler systems shall include the following types: wet-pipe systems, dry-pipe system, standpipe systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, antifreeze systems and circulating closed loop systems, systems utilizing gases or chemicals, and any other fire suppression system previously approved by the state fire marshal or the chief building code official of the department.

(7) "Inspection" means a physical and visual examination of a sprinkler system or portion thereof to verify that it conforms with the Kentucky Building Code and the standards adopted thereunder. Such examinations of existing systems for purposes of determining whether a system is operating properly are not covered by this definition, although any certificate holder is deemed qualified to make these examinations.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.

Section 4. Application for Certificate of Competency. (1) All persons seeking to become certificate holders shall demonstrate their competency by passing the National Institute for Certification in Engineering Technologies entitled Fire Protection Engineering Technology Automatic Sprinkler Design Level III test, (or the equivalent thereof approved by the commissioner for the particular type of system for which the applicant wishes to be certified competent). For range hood suppression system competency, a manufacturer's certification shall be acceptable as an alternative to the foregoing test.

(2) In lieu of the test required by subsection (1) of this section, affidavits to the effect that the certificate applicant has prior to July 16, 1984, satisfactorily supervised the preparation of technical drawings and the installation of three (3) fire protection systems of twenty-five (25) or more heads and in accordance with applicable NFPA standards adopted by reference in the Kentucky Building Code shall be accepted by the commissioner as evidence of competency. The Affidavit of Supervision shall be in accordance with the form prepared by the department and must be submitted to the commissioner and contain the necessary description and location of each such system; including the written approval for the system from the authority having jurisdiction, unless the plans were submitted to this department. Plans for both chemical and water systems must be submitted for a certificate of competency in both. Application for chemical systems only must be accompanied by three (3) drawings of such systems. This alternative shall not be available for any application submitted after July 15, 1985.

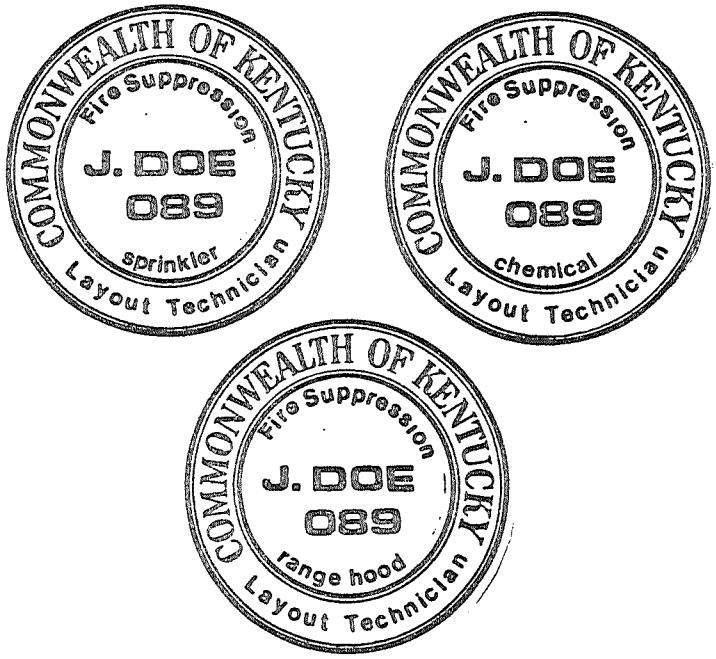
(3) Each application for a certificate of competency shall be made on the department's form entitled "Application for Certificate of Competency." The application shall be accompanied by all required documents and a nonrefundable certificate fee of $100, which shall be prorated.

Section 5. Application for Licensed Fire Protection Sprinkler Contractors. (1) Any applicant for licensure must have a certificate holder in his employ and must have, in effect, liability insurance in the premium amount of $250,000 per person and $500,000 per accident. For persons seeking to be licensed for the sole purpose of installing, repairing, maintaining and inspecting range hood fire suppression systems, the commissioner shall accept, as evidence of competency, the certification from the manufacturer of the range hood fire suppression system or from a professional engineer who has designed the system.

(2) The applicant shall complete and submit the required form together with a certificate of insurance in the amount of $250,000/$500,000 executed by a Kentucky licensed insurer and countersigned by a Kentucky licensed local agent. Such certificates shall remain in force until the insurer has terminated future liability by a thirty (30) day notice to the commissioner.

(3) The applicant shall submit a license fee in the amount of $200. The initial license fee shall be prorated.

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or under his direct supervision. The design shall be as follows:



Section 7. Certification/Licensure. (1) Upon completion of the requirements of Section 5 of this regulation, the certificate of competency shall be issued by the commissioner in the name of the certificate holder applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm as set forth on the application and state the name of certificate holder on the face of the license.

(3) Each license and certificate shall expire on June 30 of each year and shall be renewed by refiling the necessary application together with a fee of $100 for the certificate and $200 for the license, prior to June 30.

Section 8. Duties and Responsibilities of Licensed Contractor and Certificate Holder. (1) No person shall represent himself as a certified fire protection sprinkler contractor without first being licensed by the department in accordance with this regulation.

(2) No licensed fire protection sprinkler contractor shall design a fire protection sprinkler system for any building requiring the services of an architect or an engineer pursuant to KRS 323.033; however, shop drawings, including hydraulic calculations where required by the engineer may be prepared by the contractor to supplement the design.

(3) No person shall engage in any activity listed in Section 2 of this regulation unless he is supervised by or has in his employ a certificate holder.

(4) All material and information supplied by the contractor for a project requiring an engineer's seal shall be submitted to the professional engineer for the project who, in turn, shall submit them to the department and other necessary authority upon the engineer's written approval.

(5) The licensed fire protection sprinkler contractor may prepare and submit all plans and documents for the following buildings:

(a) Business, assembly, factory, mercantile and storage occupancies of less than 100 person capacity.

(b) Residential use groups of twelve (12) or less dwelling units or capacity of less than fifty (50).

Section 9. Disciplinary Action. (1) The department may refuse to renew or institute proceedings for the suspension

or revocation of certificate holders and licensed contractors, or administrative fines in lieu thereof, not to exceed $500. The following shall constitute charges which are sufficient to initiate disciplinary action:

(a) False information or misrepresentation in obtaining such license or certificate.

(b) Failure to maintain required insurance.

(c) Failure to pay the renewal fee.

(c) Gross incompetency or gross negligence in the preparation of drawings, installation, repair, alteration, maintenance, inspection or addition to fire protection sprinkler systems, as determined by the commissioner.

(e) Conviction of a felony.

(f) Fraudulent or dishonest practices while engaging in the business of fire protection sprinkler systems.

(g) Signing or affixing his seal to any plans, prints, specifications or reports which have not been prepared by him personally or under his immediate supervision.

(h) Knowingly violating any provisions of KRS 198B.550 through 630 or this regulation.

(i) Violation of a Cease and Desist Order issued by the commissioner.

(2) The commissioner shall revoke the license of a licensed fire protection sprinkler contractor who engages in the fire protection sprinkler system business while the license is suspended.

(3) All suspensions and revocations are appealable to Franklin Circuit Court or the Circuit Court in which the property is located, if filed within thirty (30) days of notice of such revocation or suspension.

Section 10. Procedures for Administrative Disciplinary Hearings. (1) Upon written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this regulation, the commissioner shall cause an investigation to be made of the matter.

(2) If the commissioner determines that there is probable cause to believe the charges alleged, the commissioner or his designated representative, acting for the department, shall conduct a hearing as provided herein.

(3) In conducting the hearing, the commissioner or his designee shall have the authority to administer oaths and affirmatives, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule and hold conferences for the settlement or simplification of the issues by consent of the parties.

(4) Any order to suspend or revoke a license or certificate and any order firing a licensee or certificate holder shall be signed by the commissioner or approved by him. The commissioner shall issue an order within thirty (30) days of the completion of any hearing subject to this regulation.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: July 13, 1984

FILED WITH LRC: July 13, 1984 at 10:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 23, 1984 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact in writing no later than August 17, 1984 the following office: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Persons in design and installation of fire protection sprinkler contractors

(a) Direct and indirect costs or savings to those affected:

1. First year: $100 fee to certificate holder and $200 fee to licensed contractors

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs of administering the program, monitoring activities of certificate holders and licensees

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Keeping files and taking applications.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 6:060. MH/MR manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
PURSUANT TO: KRS 210.440 to 210.450
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered and directed by KRS 210.370 to 210.460 to allocate available funds to Mental Health/Mental Retardation Boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Annual Plan and Budget Instructions. The Cabinet for Human Resources hereby adopts the "Annual Plan and Budget Instructions, July 1, 1984" by reference. Community Mental Health/Mental Retardation Centers will follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes, but is not limited to, the following: rate and allocation sheets, client service definitions and descriptions, fiscal plan, waiver request, letter of assurance, ad-

denda, and regional data packet. A copy of the manual is on file for inspection in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. DHS Program, Policies and Billing Instructions Manual. The Cabinet for Human Resources hereby adopts the "DHS Program, Policies and Billing Intructions Manual, July 1984" as administrative regulation by reference. The manual relates to, but is not limited to the following: billing and reimbursement for mental health, mental retardation, and substance abuse client priorities, program service definitions, reporting requirements, monitoring procedures, and amendment procedures. The instructions contained shall be followed by those Community Mental Health/Mental Retardation Centers contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 3. Cabinet for Human Resources Title XIX and DHS Funding Community Mental Health/Mental Retardation Reimbursement Manual, July, 1984. The Cabinet for Human Resources hereby adopts this manual as administrative regulation by reference. This manual relates to, but is not limited to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those Community Mental Health/Mental Retardation Centers contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

C. HERNANDEZ, M.D, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Fred James
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: NA
2. Continuing costs or savings: NA
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: NA
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: NA
(4) Assessment of alternative methods; reasons why alternatives were rejected: NA
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is identifying 3 documents as official policy within an existing regulation.

Tiering: No
Was tiering applied? Service rates were established based upon actual costs.

CABINET FOR HUMAN RESOURCES
Department for Employment Services

904 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1984, and prior to July 1, 1985. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:
(1) The "total monthly employment" reported by subject employers for the calendar year of 1983 was 12,791,694;
(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,065,975;
(3) The "total wages" reported by subject employers for the calendar year of 1983 was $16,894,998,249;
(4) The "average weekly wage" for the calendar year of 1983 for insured employment, obtained by dividing the average montly employment into total wages for such year and dividing by fifty-two (52), was $304.80;
(5) Fifty-five (55) percent of the average weekly wage of $304.80 for the calendar year of 1983 was $167.64;
(6) However, the "trust fund balance" as of December 31, 1983, was $40,000, (the outstanding loan from the Federal Unemployment Trust Fund was $150,567,748) and KRS 341.380 states that if the trust fund balance on December 31 is less than $120,000,000 the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate; and
(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1984, and prior to the first day of July, 1985, is determined to be $140.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 29, 1984
FILED WITH LRC: July 5, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing

on this regulation will be held on August 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office no later than five days before the hearing date: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mae Girkey
(1) Type and number of entities affected: All those qualified for UI in year 1984-85.
(a) Direct and indirect costs or savings to those affected:
1. First year: This regulation implements the required computation which by law the secretary must make prior to July 1, 1984.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation sets the maximum rate payable by the Division of Unemployment Insurance.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. The secretary is required by KRS 341.380 to make this mathematical computation each year. It sets the maximum rate payable.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Program Administration and Technical Services

904 KAR 6:031. Occupational training and experience project.

RELATES TO: KRS 194.030(9), 205.650 through 205.690
PURSUANT TO: KRS 13A.100, 194.050(1)
NECESSITY AND FUNCTION: 904 KAR 6:030 is being repealed because the Occupational Training and Experience Project authorized under Title IV of the Social Security Act ends July 31, 1984.

Section 1. 904 KAR 6:030 is hereby repealed.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Commissioner James P. Daniels
(1) Type and number of entities affected: It has affected all state vocational, public non-profit, and private agencies within the targeted eight (8) counties.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: An OTEP report to the Commissioners for Employment Services, Social Services and Social Insurance.
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This program has been in existence for over a year but will end July 31, 1984.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division for Aging Services

905 KAR 8:020. Homecare standards.

RELATES TO: KRS 205.201 to 205.204, 205.455 to 205.465
PURSUANT TO: 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by statute to promote and to aid in the establishment of local services for the aging, including the provision of in-home services designed to prevent the unnecessary institutionalization of functionally impaired elderly persons. The function of this regulation is to set forth the minimum requirements for participation by contracting and service entities, eligibility criteria for those receiving services, and the manner in which contributions are to be accepted, as related to Homecare services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help: being able to feed, to bathe, to dress oneself, to transfer, and to toilet.

(2) "Instrumental activities of daily living" means the components identified in Home Management and taking prescribed medication.

(3) "Cabinet" means Cabinet for Human Resources.

(4) "Core services" means those services, including, but not limited to, client assessment and case management designed to identify a functionally impaired elderly person's needs, develop a plan of care, arrange for services and monitor the provision of services, and to reassess the person's needs on a regular basis.

(5) "Assessment" means the collection of in-depth information about a person's situation and functioning. Assessment will identify all needs and resources so that a comprehensive plan can be made with the client.

(6) "Reassessment" means the formal reevaluation of the client's situation and functioning and of the services delivered to identify changes which may have occurred since the last assessment.

(7) "Case management" means a process for ensuring that clients receive appropriate, comprehensive, and timely services to meet their needs as identified in the assessment process. It is the process of planning, linking the client to all agencies in the formal and informal caregiving systems, monitoring, and advocacy through the employment of casework activities in order to achieve the best possible resolution to individual needs in the most effective way.

(8) "Chore services" means the performance of heavy housecleaning, minor household repairs, yard tasks, and other activities needed to assist in the maintenance of an eligible individual in his own home.

(9) "Escort service" means the personal accompaniment of an eligible person who is physically, mentally, or developmentally disabled and who requires such assistance for reasons of personal security or protection to and/or from a visit to his physician, dentist, or other essential services.

(10) "Functionally impaired elderly person" means a person sixty (60) years of age or older, with physical or mental limitations which restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently, thus rendering such person at risk of entering an institution. Functional impairment shall be determined through a functional assessment developed by the cabinet and delivered to each applicant for essential services.

(11) "Homemaker service" means general household activities which include non-medical personal care of individuals in the household and home management services. These services are provided by a trained individual when the person regularly responsible to perform these activities is unable to do so and there are no other individuals available to assist.

(a) "Personal care services" means services directed toward maintaining, strengthening, or safeguarding the functioning of a person is his/her own home. These services may include, but are not limited to, assisting the individual in activities of daily living including, when necessary, routine bathing, feeding, hair care, mouth care, and skin care, helping with toileting, assistance in dressing, and helping to identify and report health needs. These services do not require medical supervision but do demand formal case management supervision. Home health agencies should utilize this service rather than home health aide services unless the client is to receive home health aide services under a physician's order.

(b) "Home management services" means those services ordinarily involved with housekeeping necessary to maintain a person in his/her own home. Such services may include, but are not limited to, shopping, budgeting, meal preparation, laundry, and cleaning.

(12) "Homecare services" means these services to eligible individuals provided pursuant to KRS 205.201 to 205.204 and 205.455 to 205.465 directed toward preventing unnecessary institutionalization of functionally impaired older persons and toward maintaining those eligible for services in the least restrictive environment, excluding residential facilities. "Homecare services" shall include homemaker, home health aide, chore, home delivered meals, and core services. Subject to availability of funds and to the terms of any contract, Homecare services may include escort, home repair, and respite care services.

(13) "Home delivered meals" means the provision of a nutritionally sound meal, which meets at least one-third (1/3) of the current daily recommended dietary allowance, to an eligible person and/or spouse homebound by reason of illness, incapacity or disability, including, but not limited to, the securing and delivering of special diets and emergency shelf meals. The meal must be delivered to the home of the client.

(14) "Home health aide service," for the purpose of Homecare funding, is narrowly defined as those medically oriented health care tasks which require a physician's order and can be safely accomplished by a trained individual under the supervision of a registered nurse. These services can only be provided by licensed home health agencies in compliance with 902 KAR 20:081. Homecare funding is not to be used to purchase home health aide services when less costly homemaker services would be safe and appropriate; nor is it to substitute for Title XVIII or XIX reimbursement.

(15) "Home repair" means the performance of tasks for minor home adaptions including additions to or modifications of the home environment to enable the elderly to maintain independent living in their own homes or to ensure safety or facilitate mobility.

(16) "Respite care" means care provided an eligible person by an approved care giver (upon whom the case manager and client agree) for a designated time period because of absence or need for relief of those normally providing the care. Such care may be provided in the individual's home for up to twenty-four (24) hours at any given time.

Section 2. Eligibility. Each applicant for Homecare services provided by the state agency or any entity contracting with the state for the provision of such services must file an application for participation and must demonstrate that he/she meets at least one (1) of the following criteria:

(1) The applicant is a person sixty (60) years of age or older whose functional limitations are such that he requires a sheltered environment with provision of social and health related services specific to his activities of daily living and who:

(a) Has been determined impaired in at least two (2) physical activities of daily living (feeding, transferring to and from bed, dressing, bathing, toileting), or

(b) Has been determined impaired in at least three (3) of the following instrumental activities of daily living (housecleaning, heavy housework, laundry, shopping, taking medicine, and meal preparation).

(2) The applicant is a person sixty (60) years of age or older with a stable medical condition requiring skilled health services along with services related to activities of

daily living who would otherwise require an institutional level of care.

(3) The applicant is a person sixty (60) years of age or older currently residing in a skilled nursing facility, an intermediate care facility or a personal care facility who can be maintained at home if appropriate living arrangements and support systems can be established.

Section 3. Voluntary Contributions. Agencies providing Homecare services supported in whole or in part by funds made available pursuant to KRS 205.201 et seq. or KRS 205.455 et seq. shall provide those who receive services and other interested parties with an opportunity to make voluntary cash contributions in support of such services. In no event shall services be withheld from an otherwise eligible individual based upon his failure to voluntarily contribute to support such services.

Section 4. Contract Proposal. (1) In order to receive consideration as a provider of Homecare services, a contracting agency's proposal for service delivery shall contain at least the following:

(a) An assurance of access for the state agency to all records of the contracting agency pertaining to its contract for delivery of Homecare services.

(b) A plan for the delivery of Homecare services in the area to be served by the contracting agency containing:

1. Identification of services currently provided in the district.

2. Identification of uniform procedures for certification of eligibility and case management for individuals referred and found eligible for the program using the approved assessment instrument.

3. Methods for referral for service to other appropriate programs/services.

4. Explanation of volunteer programs to be utilized.

5. Identification of service providers for each specific service.

6. Methods for the periodic monitoring of clients for appropriateness of service.

7. Unit cost and number of proposed clients for services to be provided directly by contract or subcontract.

8. Procedures for the acceptance of voluntary contributions and assurance that such income will be used to maintain or increase the level of service.

9. Identification of linkages to existing services. The legal mandate for adult protective services must be maintained by the Department for Social Services.

(c) A plan for the implementation of case management responsibilities.

(d) An assurance that the proposed contracting agency will provide approved services as defined in Section 1 of this regulation consistent with the policies, procedures and directions of the cabinet and that any subcontract which may be entered obligate the subcontracting party to perform in a similar manner.

(e) A description of long and short range goals in the provision of approved Homecare services.

(f) A description of the manner in which delivery of services to eligible individuals is to be undertaken.

(g) A procedure method to monitor all subcontracts for direct services.

(2) The contracting agency must assure that any assessment of applicants to determine eligiblity for Homecare services include, at a minimum, assessment by a social worker or a licensed nurse of the following:

(a) Physical health.

(b) Activities of daily living and instrumental activities of daily living (potential and actual performance).

(c) Physical environment and living arrangements.

(d) Mental function (cognitive and emotional).

(e) Financial resources.

(f) Social support and participation.

(g) Current services utilization.

(3) Assessment of eligibility shall be conducted at least twice yearly.

(4) Any agency contracting with the cabinet for the provision of home health aide services must provide documentation of licensure and substantial compliance with applicable licensure regulation of KRS Chapter 216B.

Section 5. Requirement of Contracts. Service providers contracting to provide Homecare services supported in whole or in part from funds received from the cabinet shall:

(1) Permit staff of the Cabinet for Human Resources, Division of Aging Services to monitor and evaluate services performed pursuant to the contract.

(2) Assure that an initial training program and ongoing in-service program is provided and maintained for staff providing services to Homecare clients.

(3) Maintain fiscal records on the use of funds received pursuant to contract in accordance with generally accepted accounting principles.

(4) Provide approved services in accordance with the terms and conditions of its subcontract and of the policies and procedures of the cabinet regarding Homecare.

(5) Maintain:

(a) Written job descriptions for each job category for all staff and volunteer positions which comprise service delivery;

(b) Written personnel policies; and

(c) A wage scale for each job category.

(6) Assure that all staff providing Homecare services are provided professional supervision in compliance with policies provided by the cabinet.

(7) Case managers shall be either trained social workers with a minimum of two (2) years' professional experience or licensed nurses with a minimum of two (2) years' professional experience.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: July 12, 1984
FILED WITH LRC: July 13, 1984 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: R. Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Hockensmith

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional paperwork

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Utilizing the broad definition of Home Health Aide Services is more expensive and permits fewer people to be served with the limited funds available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: By limiting Home Health Aide Services to those prescribed by a physician that require Registered Nurse supervision more people may be served for the same amount of money.

Tiering:
Was tiering applied? No. All contract agencies and service providers participating in the Homecare Program will be expected to comply.

Reprint

COMPILER'S NOTE: Due to omission of material in the original printing of Section 7 of the following regulation, this regulation is being reprinted. This regulation became effective on June 28, 1984.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Vocational Education

705 KAR 4:010. General standards.

RELATES TO: KRS *156.031* [156.112], 163.020, 163.030 , *163.087*
PURSUANT TO: KRS *156.031* [13.082, 156.112], 163.030 , *163.087*
NECESSITY AND FUNCTION: KRS *156.031* [156.112] gives the State Board of Education the function and authority to develop and adopt policies and regulations by which the Department of Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating occupational education programs, services, and activities; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes*; and KRS 163.087 gives the State Board authority to set fees.* This regulation establishes general standards for all vocational education programs.

Section 1. Vocational education programs shall be designed to serve one (1), or combinations, of the following groups of persons: secondary, postsecondary, short term adult, long term adult, disadvantaged, and handicapped. Instructional programs will not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or handicap.

Section 2. Vocational instruction shall be provided to serve occupations within the following vocational program areas: agribusiness, business and office, health and personal services, home economics, industrial, marketing and distributive, practical arts, public service, and special vocational.

Section 3. Objectives of the instruction shall be designed to: (1) Prepare individuals for gainful employment as semi-skilled or skilled workers, technicians, or semi-professionals in recognized occupations and in new or emerging occupations; or
(2) Prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; or
(3) Assist individuals in the career development process of career awareness and indepth career exploration necessary for making meaningful occupational choices; or
(4) Up-grade and up-date individuals in their present occupations; or
(5) Achieve any combination of the above.

Section 4. The content of instruction in vocational education programs shall: (1) Be based on a consideration of the skills, attitude, and knowledge required to achieve the objective of such instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve such objectives.
(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction.
(3) Include the most up-to-date knowledge and skills necessary for competencies required to meet the objectives of such instruction.
(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The vocational program of instruction shall combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, or other occupational experience which:
(1) Is appropriate to the objectives of instruction,
(2) Is of the sufficient duration to develop competencies necessary for the student to achieve such objectives, and
(3) Is supervised, directed, or coordinated by persons qualified under the Kentucky State Plan for the Administration of Vocational Education.

Section 6. Secondary vocational education programs shall provide a variety of learning experiences and related services. Programs in grades seven (7) and eight (8) shall be coordinated to allow students to explore clusters of occupations. Programs at grades nine (9) and ten (10) shall provide indepth exploration courses by occupational area. Programs at grades eleven (11) and twelve (12) shall provide specialized skill development to make individuals more employable in one (1) group of occupations than any other. Students enrolled in

public or private schools shall be permitted to enroll in state-operated vocational programs consistent with that school's student enrollment quota for cooperating local school districts.

Section 7. Long-term adult (postsecondary) programs shall be designed for occupational preparation of persons sixteen (16) years of age or older who have completed or left the regular high school. The programs shall be organized on a full-time basis during the day or evening hours. Students may enroll in all or any part of the scheduled program. *The initial registration fee for half-time and full-time in-state, adult students in state-operated schools shall be twenty (20) dollars for FY '85 and FY '86; and for out-of-state students, forty (40) dollars for FY '85 and FY '86. The monthly tuition for half-time, in-state adult students shall be five (5) dollars in FY '85 and eight (8) dollars in FY '86; and for out-of-state students, twenty-five (25) dollars for FY '85 and thirty (30) dollars for FY '86. The monthly tuition for full-time, in-state adult students shall be ten (10) dollars for FY '85 and sixteen (16) dollars for FY '86; and for out-of-state students, fifty (50) dollars for FY '85 and sixty (60) dollars for FY '86. The fees and tuition for FY '86 shall be continued until changed by the State Board of Education.* [Registration and tuition fees shall be set annually by the State Board of Education.]

Section 8. Short-term adult programs shall be designed to meet the needs of persons who have entered the labor market or are temporarily unemployed and who need training in preparing or supplementing knowledge and skills for employment and/or job advancement. Courses shall consist of either single or multiple units of intensive instruction. *The fees for adult short-term classes for one (1) to eleven (11) hours of instruction per week shall be twenty-five (25) cents per hour for in-state and out-of-state students for FY '85 and FY '86. These fees shall be in effect until such time as the State Board changes them.* [Student fees for short-term adult vocational education programs shall be set annually by the State Board of Education.]

Section 9. The vocational program shall be designed to accommodate students with special learning needs mainstreamed into the regular program. Special vocational programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the handicapped conditions warrant.

Section 10. Instructional personnel in vocational education shall be qualified and fully certified under the provisions of the Kentucky State Plan for Vocational Education and other regulations of the State Board of Education. Work experience requirements not included as a part of certification programs shall be approved by the Superintendent of Public Instruction.

Section 11. All instructional personnel shall attend district, regional, or state in-service education meetings called and/or approved by the Superintendent of Public Instruction when such meetings are reimbursed by funds from the Bureau of Vocational Education. Instructional personnel may be excused by the local superintendent when the reasons are justified and submitted in writing to the Superintendent of Public Instruction.

Section 12. Annual plans for vocational programs and applications for funds for the next school year shall be submitted by local educational agencies to the regional program coordinator for vocational education by April 15. The program plan shall be reviewed by the regional staff and the Bureau of Vocational Education staff and approved by the Superintendent of Public Instruction prior to program implementation.

Section 13. Recognized vocational student organizations shall be an integral part of the instructional program and shall be supervised by qualified vocational education personnel.

Section 14. Each occupational preparation program area shall have an active program advisory committee to assist in planning, implementing, and evaluating programs.

Section 15. A continuous evaluation of the vocational education program shall be conducted by the local educational agency in accordance with requirements and instruments developed or approved by the Department of Education and by the local educational agency to determine the effectiveness of the program in terms of its objectives. The evaluation shall include a follow-up of students after their termination from the program. The Superintendent of Public Instruction shall designate the records and reports to be kept by local educational agencies operating approved vocational education programs. Staff from the Department of Education shall make periodic evaluation visits for program improvement purposes.

Section 16. Where applicable, all vocational education programs shall operate according to guidelines developed by state and/or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by such agencies.

Section 17. Classrooms, libraries, shops, laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the vocational instruction. Although the amount of supplies needed by each class will vary in local districts, the districts shall provide an appropriate portion of the operating money allotted with each vocational unit. The facilities for any vocational education program shall be of adequate size and design to accommodate the activities and number of work stations unique to each program. Facilities and equipment shall be approved by the Superintendent of Public Instruction.

Section 18. Vocational preparation programs shall provide a curriculum of sufficient length to permit students to secure entry-level skills in the occupations for which they are training. They shall conform to the requirements in the Kentucky Program of Studies.

Section 19. Minimum and maximum class size shall be based on program design and available facilities. No class shall be offered for less than ten (10) students.

Section 20. A five (5) dollar shop fee shall be charged for each live work project accepted by the school requiring more than one (1) hour of labor. No shop fees shall be charged for projects in schools located in correctional institutions. Student exemptions may be made in compliance with written school policies. Customers will purchase the necessary materials for a shop job or be charged the cost of the materials plus twenty (20) percent markup when they do not provide their own materials. Cosmetology charges shall be based on the State Cosmetology Board requirements.

Section *21.* [20.] A vocational school may be permitted to provide an optional senior plan for students from secondary schools being served by that vocational school. A senior plan

provides that a student may choose to attend a vocational school for six (6) hours a day while enrolled in a high school for the senior year. The local district shall receive ADA credit for students participating in this plan.

(1) The vocational school requesting permission to implement an optional senior plan shall receive approval from the State Superintendent of Public Instruction in accordance with this and other Kentucky Administrative Regulations.

(2) For ADA calculation purposes, students accepted in the senior plan shall be enrolled in a public school in Kentucky.

(3) The local school superintendent shall certify that students participating in this program will be eligible for graduation upon successful completion of the program.

(4) An annual evaluation of the senior plan shall be submitted to the State Board.

(5) With approval of the local board of education, a local high school may choose to participate in the senior plan. Individual students will have the option of participating in the senior plan or the usual plan of attending a vocational school three (3) hours a day for the junior and senior year.

(6) Participation in the senior plan shall in no way jeopardize the student's high school standing in terms of participation in other high school activities. Participation in the high school activities shall be the responsibility of the local board of education and appropriate arrangements for such participation will be ensured by the vocational school.

Section *22.* [21.] Requests for exceptions to any standards for vocational instructional programs shall be submitted in writing by the local educational agency, recommended by the appropriate program unit director, and approved by the Superintendent of Public Instruction. Exceptions shall be limited to experimental programs, innovative programs, and unusual cases and shall be approved on an individual and annual basis.

ALICE McDONALD
Superintendent of Public Instruction
APPROVED BY AGENCY: May 8, 1984
FILED WITH LRC: May 15, 1984 at 8:30 a.m.

COMPILER'S NOTE: The following regulation was originally published in the June Register, but did not complete the review procedure due to a restraining order. The restraining order has now been lifted, and the regulation is hereby republished. Information on the public hearing is printed at the end of the regulation.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 1:340. State health plan.

RELATES TO: KRS Chapters 194 and 216B
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Health Planning and Resources Development Act, 42 USC 300 M-3 requires participating states to adopt by procedures set out in the United States Code, a state health plan. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the proper administration of the cabinet and its programs. The Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board utilizes the state health plan in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to assist in the inventory of existing health resources and to set planning goals and guidelines.

Section 1. The Kentucky State Health Plan 1983-1986, was adopted by the State Health Planning Council and approved by Governor John Y. Brown, Jr., on August 15, 1983, as the document that sets out planning policies and guidelines for use by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board. A copy of the Kentucky State Health Plan is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The following portions of the Kentucky State Health Plan are hereby adopted by reference as regulations of the Cabinet for Human Resources as if fully set out herein:

(1) Acute care policies p. 25-32, with the exception of the following:

(a) Policies relating to excess capacity and utilization, p. 28.

(b) Policies relating to the containment of capital expenditures, p. 30.

(c) Policies relating to regionalization, p. 30.

(2) Long term care policies, p. 32-35.

(3) Health personnel policies, p. 36-41.

(4) Planning criteria and review standards, p. 42-62 with the exception of the following:

(a) Delicensure of excess capacity, p. 47.

(b) Hospital capital expenditure limit, p. 48.

(c) Tertiary and medical service centers designation, p. 49.

(5) Glossary.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: May 15, 1984
FILED WITH LRC: May 15, 1984 at 12 noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 21, 1984, at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1984: R. Hughes Walker, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June 27-28, 1984 Meeting

(Subject to subcommittee approval at the July 9, 1984 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday June 27, 1984 at 2:30 p.m. in Room 12 of the Capitol Annex and on Thursday, June 28, 1984 at 10:00 a.m. in Room 103 of the Capitol Annex Building.

Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston and Joe Lane Travis; Representatives Greg Stumbo and Albert Robinson.

Guests: Greg Brotzge and Terry Feathers, Louisville Chamber of Commerce; Ralph Ed Graves, Lobbyist Alert; Barbara J. Bryant, Attorney General's Office; Charles L. Bratton and Pam Johnson, Kentucky Retirement Systems; Martin Anderson, Ron Camic, Floyd A. Day, Jr., Jill K. Day, Ked Fitzpatrick, Ted Hanekamp, Dorman Harrod, Carlos Hernandez, M.D., Margaret Hockensmith, Alison Johnson, Shirley A. Justice, Ron Keal, Marvin Miller, Phyllis Parker, Sharon Rodriguez, Lewis Fred Schloemer, Lynda Sherrard, Phillip R. Spangler, Bill Verbeten, R. Hughes Walker, Rob Williams and Marcus G. Yancey, Cabinet for Human Resources; Jim Baker, Department of Banking & Securities; Jim Klosterman, Department of Housing; Gary Bale, Sam Jackson, Bill Ramsey, Wendell Cave, Charles D. Wade and Charles E. Calloway, Department of Education; Michael Bradley, Corrections Cabinet; Bill Graves, Department of Fish & Wildlife Resources; Harold L. Newton, Department of Personnel; Arthur Hatterick, Jr., Personnel Board; and Londa L. Wolanin, Kentucky Higher Education Assistance Authority/Kentucky Higher Education Student Loan Corporation.

LRC Staff: Susan Harding, June Mabry, Donna Valencia, Joe Hood and Carla Arnold.

Press: Susan Warner, UPI

The Subcommittee met on June 27, 1984 to discuss the provisions of House Bill 334 (KRS Chapter 13A). The members voted to meet on July 9 and 10, and, beginning with the August meeting, set the regular meeting date on the first Tuesday of each month.

The meeting was continued on June 28, 1984, and the subcommittee submits the following report on regulations considered at that time.

Chairman Brinkley announced that a quorum was present and called the meeting to order. Chairman Brinkley then asked Joe Hood to take the Chairman's place and nominations to elect a chairman began. Senator McCuiston made a motion to nominate Representative Brinkley as Chairman, Representative Albert Robinson seconded. Representative Brinkley was elected chairman by acclamation.

Chairman Brinkley called the meeting to order. On motion of Senator Travis, seconded by Representative Albert Robinson the minutes of the May 31, 1984 meeting were approved.

The following regulation is deferred at the request of the promulgating agency:

LEGISLATIVE RESEARCH COMMISSION

Administrative Regulations

1 KAR 1:010. Form of Administrative regulations; Administrative Register; codification.

In discussion of the number of regulations incorporating material by reference, the subcommittee members questioned whether or not the incorporation conforms to the statutes.

Senator Travis stated that in his opinion House Bill 334 requires the complete text of a regulation to be published, and since material incorporated by referencce is not published, these regulations were not in compliance with the law. For this reason, Senator Travis and Representative Robinson objected to the following regulations which incorporate material by reference:

CABINET FOR HUMAN RESOURCES

Department for Health Services

Maternal and Child Health

902 KAR 4:050. Kentucky family planning program.

Hospitalization of Mentally Ill and Mentally Retarded

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

Department for Social Insurance

Medical Assistance

904 KAR 1:250. Incorporation by reference of materials relating to the Medical Assistance Program (with technical amendment).

Public Assistance

904 KAR 2:140. Supplementary policies for programs administered by the Department for Social Insurance (with technical amendment).

904 KAR 2:150. Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program (with technical amendment).

904 KAR 2:160. Disability determinations program (with technical amendment).

904 KAR 2:170. Incorporation by reference of materials relating to the Child Support Program (with technical amendment).

904 KAR 2:180. Incorporation by reference of materials relating to the Home Energy Assistance Program (with technical amendment).

904 KAR 2:190. Incorporation by reference of materials relating to the Refugee Assistance Program (with technical amendment).

904 KAR 2:200. Collections program (with technical amendment).

Food Stamp Program

904 KAR 3:090. Incorporation by reference of materials relating to the Food Stamp Program (with technical amendment).

Department for Employment Services

Employment Services

904 KAR 6:010. Work incentive program.

904 KAR 6:020. Weatherization assistance for low income persons.

904 KAR 6:030. Occupational training and experience project.

904 KAR 6:040. Job Training Partnership Act.

904 KAR 6:050. Veterans' benefits.

Department for Social Services

Community Action Agencies

905 KAR 6:020. State plan for CSBG program (with technical amendment).

Children's Services
905 KAR 7:010. Children's residential services policy manual.
905 KAR 7:030. Children's residential services facilities manuals.
905 KAR 7:060. Children's residential facilities capacities.
Older Americans Act
905 KAR 8:010. Older Americans Act audit guide.
905 KAR 8:030. Meal standards for the Older Americans Act.
905 KAR 8:050. Older Americans Act procedural instructions for contractors.
905 KAR 8:080. Older Americans Act financial management and nutrition guides.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
Multibank Companies
808 KAR 11:010. Acquisitions (The Subcommittee and the agency agreed to amend this regulation due to objections raised by the Subcommittee.)

EDUCATION AND HUMANITIES CABINET
Department of Education
Instructional Services
704 KAR 3:285. Programs for the gifted and talented.
Administration
705 KAR 1:010. Annual program plan.

Corrections Cabinet
Office of the Secretary
501 KAR 6:010. Corrections policies and procedures.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
KHEAA Grant Programs
11 KAR 5:010. Authority, purpose, name of grant programs.

The Subcommittee had no objections to the following regulations:

DEPARTMENT OF LAW
Division of Consumer Protection
40 KAR 2:010. Recreational and retirement use land, disclosure costs. (Amended After Hearing)

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
General Rules
105 KAR 1:010. Contributions and interest rates.
105 KAR 1:080. Payment options for members and beneficiaries to conform with the Tax and Fiscal Responsibility Act.
105 KAR 1:090. Certain payment options for retiring members.
105 KAR 1:100. Payment options for retiring members.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Child Welfare
905 KAR 1:190. Conduct of hearings for revocation of supervised placement.
Children's Services
905 KAR 7:040. Continuum of care for children in residential facilities.
905 KAR 7:070. Children's residential staff training requirements.
Older Americans Act
905 KAR 8:040. Allocation formula Older Americans Act.
905 KAR 8:110. Homecare fee schedule for the elderly.
905 KAR 8:130. Allocation formula for Homecare.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
Multibank Companies
808 KAR 11:020. Procedures.

Department of Housing, Buildings and Construction
Kentucky Building Code
815 KAR 7:010. Administration and enforcement.
Local Fire Departments
815 KAR 45:015. Aid to fire departments.
815 KAR 45:040. Survivor benefits, death of volunteer firefighter.

EDUCATION AND HUMANITIES CABINET
Department of Education
Pupil Transportation
702 KAR 5:020. Program cost calculation.
School Terms, Attendance and Operation
703 KAR 2:020. Calendar.
Instructional Programs
705 KAR 4:010. General standards.

TOURISM CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:111. Deer and turkey hunting on special areas.

DEPARTMENT OF PERSONNEL
Personnel Rules
101 KAR 1:010. Definitions.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
Guaranteed Student Loans and Loans to Parents
15 KAR 1:030. Administrative reserve fund.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Kentucky Loan Program
11 KAR 3:040. Lender participation requirements.

The Subcommittee had no objections to the emergency regulations reviewed at this time.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Maternal and Child Health
902 KAR 4:050E. Kentucky family planning program.
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:080E. Policies and procedures for mental health/mental retardation facilities.

Department for Social Insurance
Medical Assistance
904 KAR 1:250E. Incorporation by reference of materials relating to the Medical Assistance Program (with technical amendment).
Public Assistance
904 KAR 2:140E. Supplementary policies for programs administered by the Department for Social Insurance (with technical amendment).
904 KAR 2:150E. Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program (with technical amendment).
904 KAR 2:160E. Disability determinations program (with technical amendment).
904 KAR 2:170E. Incorporation by reference of materials relating to the Child Support Program (with technical amendment).

904 KAR 2:180E. Incorporation by reference of materials relating to the Home Energy Assistance Program (with technical amendment).
904 KAR 2:190E. Incorporation by reference of materials relating to the Refugee Assistance Program (with technical amendment).
904 KAR 2:200E. Collections program (with technical amendment).
Food Stamp Program
904 KAR 3:090E. Incorporation by reference of materials relating to the Food Stamp Program (with technical amendment).

Department for Employment Services
Employment Services
904 KAR 6:010E. Work incentive program.
904 KAR 6:020E. Weatherization assistance for low income persons.
904 KAR 6:030E. Occupational training and experience project.
904 KAR 6:040E. Job Training Partnership Act.
904 KAR 6:050E. Veterans' benefits.

Department for Social Services
Community Action Agencies
905 KAR 6:020E. State plan for CSBG program (with technical amendment).
Children's Services
905 KAR 7:010E. Children's residential services policy manual.
905 KAR 7:030E. Children's residential services facilities manuals.
905 KAR 7:060E. Children's residential facilities capacities.
Older Americans Act
905 KAR 8:010E. Older Americans Act audit guide.
905 KAR 8:030E. Meal standards for the Older Americans Act.
905 KAR 8:050E. Older Americans Act procedural instructions for contractors.
905 KAR 8:080E. Older Americans Act financial management and nutrition guides.

Corrections Cabinet
Office of the Secretary
501 KAR 6:010E. Corrections policies and procedures.

The meeting was adjourned at Noon on June 28, 1984 until July 9, 1984.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July 9-10, 1984 Meeting

(Subject to subcommittee approval at the August 6, 1984 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Monday, July 9, 1984 at 2:00 p.m. and on Tuesday, July 10, 1984 at 10:00 a.m. in Room 104 of the Capitol Annex Building .

Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston, Bill Quinlan and Joe Lane Travis; Representatives Albert Robinson and Greg Stumbo.

Guests: R. W. "Dub" Wilkins, PAMCO, Inc.; Ann L. Stechow and Ralph Ed Graves, Lobbyist Alert; Roger Lewis Barber, Linda F. Blackburn, Jennifer M. Bryson, Ron Camic, E. P. Conyers, Don Dixon, John P. Draper, Margaret Frederick, Margaret Hockensmith, Peggy S. Kidd, Ida Lyons, Clarence P. Marshall, Mary Patton, Pat Pennington, Phillip R. Spangler, Anita Travis, Sarah Wilding, Frank Willey and Rob Williams, Cabinet for Human Resources.

LRC Staff: Susan Harding, June Mabry, Donna Valencia, Joe Hood, Bill Wiley, Norman Lawson, Peggy Hyland and Carla Arnold.

Chairman Brinkley called the meeting to order and the minutes of the
June 27-28, 1984 meeting were approved.

The Subcommittee discussed matters that are required to be published in the Administrative Register. Norman Lawson, Assistant Statute Reviser, stated that LRC's position was that the actual numbered text of a regulation, the regulatory impact analysis, fiscal note, tiering statement, statement of emergency, citation of authority and necessity and function statements are required to be published in the Administrative Register.

Representative Robinson expressed concern that material incorporated by reference is not readily available for review by the public. Senator Joe Lane Travis stated that he was concerned that by adopting federal statutes and regulations by reference, agencies were duplicating requirements already in effect.

In discussion of the Subcommittee conducting a continuous study of statutes providing for promulgation of regulations, Representative Robinson suggested that the Subcommittee identify statutes with broad authority and recommend amendments to these statutes for the 1986 General Assembly.

The following regulations were deferred by the subcommittee at the request of the promulgating agency:

EDUCATION AND HUMANITIES CABINET
Department of Education
General Administration
702 KAR 1:005. Textbook Program Plan.
School Terms, Attendance and Operation
703 KAR 2:050. Attendance; resident, non-resident.
Exceptional and Handicapped Programs
707 KAR 1:051. Exceptional Children's Programs.
707 KAR 1:055. Programs for home instruction and/or hospital instruction.

LEGISLATIVE RESEARCH COMMISSION
Administrative Regulations
1 KAR 1:010. Form of administrative regulations; Administrative Register; codification. (Agency requests deferral of this regulation to the October meeting.)

CABINET FOR HUMAN RESOURCES
Administration
900 KAR 3:010. CHR personnel policies.

The subcommittee had no objections to the following regulations:

CABINET FOR HUMAN RESOURCES
Department for Health Services
Local Health Departments
902 KAR 8:020. Policies and procedures for local health department operations.

Department for Social Insurance
Unemployment Insurance
904 KAR 5:100. Claimant's reporting requirements.
904 KAR 5:130. Appeals. (Amended by Subcommittee and agency to meet staff reviewer's objection.)
904 KAR 5:260. Unemployment insurance procedures.

Department for Social Services
Child Welfare
905 KAR 1:150. "Baby Doe" regulation.

The Subcommittee took no action on the following emergency regulations:

CABINET FOR HUMAN RESOURCES
Administration
900 KAR 3:010E. CHR personnel policies.

Department for Health Services
Local Health Departments
902 KAR 8:020E. Policies and procedures for local health department operations.

Department for Social Insurance
Unemployment Insurance
904 KAR 5:100E. Claimant's reporting requirements.
904 KAR 5:130E. Appeals.
904 KAR 5:260E. Unemployment insurance procedures.

Department for Social Services
Child Welfare
905 KAR 1:150E. "Baby Doe" regulation.

The meeting was adjourned at 11:00 a.m. on July 10, 1984 until August 6, 1984.

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