Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
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IN THIS ISSUE

Public Hearing Process 691

Emergency Regulations:
Fish and Wildlife Resources 692
Education 697
Human Resources 697

Amended Regulations Now in Effect:
Transportation 699
Education 700
Human Resources 700

Amended After Hearing:
Natural Resources and Environmental Protection 703
Transportation 726
Human Resources 730

Proposed Amendments:
Board of Ophthalmic Dispensers 732
Board of Physical Therapy 734
Fish and Wildlife 735
Natural Resources and Environmental Protection 737
Corrections 782
Mines and Minerals 788
Public Service Commission 790
Kentucky Harness Racing Commission 798
Housing, Buildings and Construction 802
Human Resources 806

Proposed Regulations Received Through October 15:
Military Affairs 879
Fish and Wildlife Resources 880
Natural Resources and Environmental Protection 885
Transportation 909
Alcoholic Beverage Control 910
Housing, Buildings and Construction 911
Human Resources 914

Minutes of the Administrative Regulation Review Subcommittee 920

CUMULATIVE SUPPLEMENT

Locator Index—Effective Dates E2
KRS Index E7
Subject Index E11

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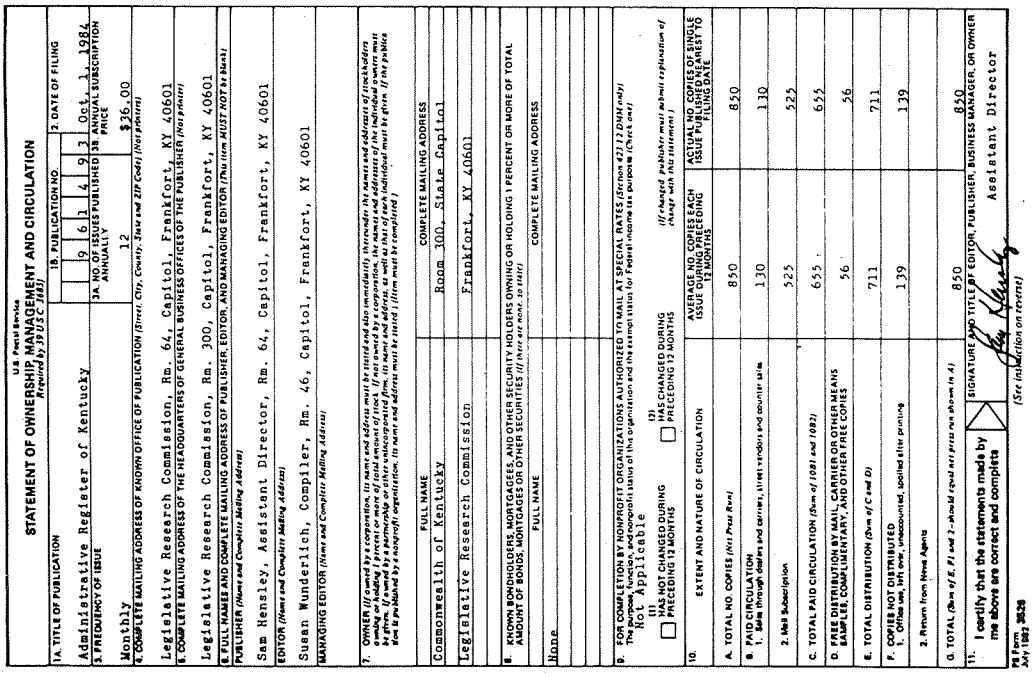
The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty nor more than thirty days following publication of the administrative regulation. 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.

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PS Form 3526, July 1983

Emergency Regulations Now In Effect

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

STATEMENT OF EMERGENCY

The amendment of 301 KAR 1:140, Special commercial fishing permit, has been involved in a great deal of controversy between the sport fishing/tourism industry and the commercial fishing industry in Western Kentucky. Although amendments were proposed and passed by the Fish and Wildlife Commission at their December 1983 meeting, an acceptable compromise agreement among the different factions was not reached until just prior to the Commission's August 1984 meeting. The amendments were approved at that time. The procedures required for implementation of an ordinary administrative regulation will not provide sufficient time before the special permit season opens on November 1. The emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
CARL E. KAYS, Commissioner
Department of Fish and Wildlife Resources

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 1:140E. Special commercial fishing permit.

RELATES TO: KRS *150.025,* 150.110, 150.120, 150.170, 150.175, 150.190, 150.450
PURSUANT TO: *13A.350, 150.025* [13.082]
EFFECTIVE: October 2, 1984
NECESSITY AND FUNCTION: Gill and trammel nets are the most effective gear for the taking of certain rough fishes, but they pose a danger of overharvest of the most desirable rough species and are a threat to certain sport fish if not properly regulated; therefore, the commissioner with the concurrence of the commission finds a need to authorize additional use of such gear through the issuance of a permit which will have strict termination provisions and other safequards to control their use. This amendment is necessary to *increase the waiting period for reapplication for a permit following revocation; to change the length of the season at Barkley Lake; to require permit holders to mark their netting boats; to delineate the waters open to special permit fishing at Rough River Lake; to restrict the depth at which unattended nets may be set* [prevent a convicted violator from further participation in the special neeting program as an assistant on another permit].

Section 1. Issuance of Special Permit. The commissioner, after giving due consideration to the composition of the commercial fish population, the vulnerability of the game fish involved, and the ability and reliability of the applicant may issue a special commerical fishing permit to use gill and trammel nets in specified waters, other than those designated in 301 KAR 1:145; Section 2(4)(b).

Section 2. Application for Permits and Revocation. An applicant for a special permit to use gill and trammel nets shall file an application to which he signs his name attesting that he has read and will abide by all of the provisions of the permit and will obey all applicable game and fish laws and regulations or have his permit revoked without refund if found in violation by the commissioner. The offending permittee and assistant shall be ineligible to apply together or separately for another permit or to be an assistant on any other permit for a perod of *three (3) years* [one (1) year] following revocation.

Section 3. General Provisions of the Special Permit to use Gill and Trammel Nets.

(1) The applicant for a permit must possess a valid commercial fishing license.

(2) The permit fee shall be $500.

(3) Mesh size:

(a) Gill and trammel nets set and left must have a bar mesh size no smaller than three and one-half (3½) inches and no larger than four and one-half (4½) inch bar mesh size.

(b) Gill and trammel nets used as whip sets may have a minimum bar mesh size of three (3) inches, and no larger than four and one-half (4½) inch bar mesh size, but must be constantly attended by the permittee and/or assistant.

(4) Waters open to special permit fishing:

(a) *The waters of Rough River Lake from the dam upstream on the North Fork to the McCoy-Roff Road bridge (Galloway Bridge) and on the South Fork to the Kentucky Highway 737 bridge (Peter Cave Bridge)* [Commercial fishing waters to Rough River Lake].

(b) Commercial fishing waters of Barkley Lake.

(c) Commercial fishing waters of Kentucky Lake.

(5) The permit shall be valid for five (5) months only, November 1 through March 31 *at Rough River Lake and Kentucky Lake, and for four (4) months only, November 1 through the last day of February at Barkley Lake.*

(6) The permittee shall have no more than one (1) assistant who is a licensed commercial fisherman listed on the permit. Assistant may be replaced at any time, after the conservation officer or officers in the counties fished are notified, and a written notice given to the commissioner. The name of a new assistant must be listed on the permit and all copies, and his predecessor's name marked out with ink.

(7) The permittee or assistant must have the permit or copy of the permit in possession at all times gear is being transported, set, raised, or run. Their names shall be on the permit or copy, and each must contain the same names.

(8) Illegal acts by permittee or assistant acting together or separately may result in permit revocation.

(9) The permittee shall keep daily catch and sales reports and submit weekly to the commissioner. No subsequent permit shall be issued until all reports requird by the preceding permit are received by the commissioner. The reports shall include:

(a) The number of each species caught by common name.

(b) Disposition of each fish.

(c) Duplicate sales receipt of all fish sold.

(d) The average total length of nets fished daily listing gill and trammel nets separately and whip sets separately.

(e) Daily catch and sales reports and duplicate receipts of fish and fish products sold must be sent in weekly in postage paid envelopes provided by the department.

(10) All rough fish taken in the nets must be removed from the lake.

(11) Each net must be run at least once every twenty-four (24) hours.

(12) Each 100 feet of net must have attached one (1) commercial gear tag as required in KRS 150.175, subsection (6). Tags shall be grouped on the inshore and of each continuous net.

(13) A permittee must tag and fish at least 800 yards of nettage an equivalent of twenty-five (25) percent of the open session.

(14) Each permittee must mark his netting boat with two (2) special net permit decals supplied by the department. One (1) decal shall be affixed to each side of the boat or motor so as to be clearly visible when the boat is being used for special permit netting purposes.

(15) Gill and trammel nets used as stationary set nets must be set so that the top of the net or float line is a minimum of three (3) feet below the waters surface. Whip set nets that are attended constantly by the fisherman may be set at any depth.

CARL E. KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDALL COMBS, Secretary
APPROVED BY AGENCY: September 14, 1984
FILED WITH LRC: October 2, 1984 at 11 a.m.

STATEMENT OF EMERGENCY

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states which wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation will not suffice because insufficient time to accomplish the required state procedures during the short period between promulgation of federal hunting regulations and the opening of the hunting season will preclude timely effectiveness of the administrative regulation. The emergency regulation will be replaced by an ordinary administrative regulation.

CARL E. KAYS, Commissioner
MARTHA LAYNE COLLINS, Governor

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:200E. Migratory bird hunting seasons.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.630
PURSUANT TO: KRS 13A.350, 150.025
EFFECTIVE: October 9, 1984
NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for the Gun and Archery. (1) Ducks, Coots and Mergansers: November 20 through November 25 and December 8 through January 20.

(2) Geese:

(a) Eastern zone: November 20 through January 20, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

(b) Western zone: This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the western zone is subdivided into the Ballard quota zone and associated counties and the Henderson-Union quota zone and associated counties. Seasons within the western zone are specified as follows:

(c) Ballard quota zone: January 7 through January 31, or until such time as 4,400 Canada geese are harvested, whichever occurs first. This zone is defined as the area within the following boundary: Starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 4,400 Canada geese will be filled prior to January 31, the goose hunting season will close in the Ballard quota zone and in those portions of Ballard, McCracken, Graves, Carlisle, Hickman, Fulton and Marshall Counties in the western zone. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(d) Henderson-Union quota zone: January 7 through January 31, or until such time as 1,400 Canada geese are harvested, whichever occurs first. This quota zone includes those portions of Henderson and Union Counties within the western zone. Should it be determined that the quota of 1,400 Canada geese will be filled prior to January 31, the goose hunting season in this zone and those portions of Lyon, Crittenden and Livingston Counties in the western zone will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(3) Sora and Virginia Rails and Gallinules: November 20 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks, Coots and Mergansers:

(a) A point system bag limit is in effect. Point values are as follows for either sex unless specified:

Species		Points Each
1.	Canvasback and black duck	100
2.	Hen mallard, wood duck, hooded merganser and redhead	70

3.	Pintail, blue-winged teal, cinnamon teal, green-winged teal, widgeon, gadwall, shoveler, scaup and mergansers except hooded merganser	10
4.	Drake mallard and all other species of ducks not mentioned above	25
5.	Coots, but limited to fifteen (15) daily and thirty (30) in possession	0

(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds 100 points.

(c) The possession limit is the maximum number of ducks which could have legally been taken in two (2) days.

(2) Geese:

(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese.

(b) The possession limit is ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.

(3) Sora and Virginia Rails: The bag and possession limits are twenty-five (25) singly or in the aggregate.

(4) Gallinules: The bag and possession limits are fifteen (15) and thirty (30), respectively.

Section 3. Shooting Hours. One-half (½) hour before sunrise to sunset for all species listed in this regulation except that shooting hours in the Ballard quota zone will be one-half (½) hour before sunrise to 2 p.m. for ducks, geese, and coots during the goose season in the Ballard quota zone.

Section 4. Shot Size Restrictions. No shot larger than BBs may be in possession while hunting the species listed in this regulation.

Section 5. Falconry Season. November 1 through January 20. All species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours will conform with the shooting hours stated in Sections 3 and 7 of this regulation.

Section 6. Migratory Bird Shipping and Transporting Restrictions. Geese taken in the counties of Ballard, Hickman, Fulton and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of any licensed waterfowl hunter, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese.

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Unless otherwise specified in this section, stipulations of the other sections of this regulation apply.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons.

1. The season for ducks, coots and mergansers is January 9 through January 20.

2. The season for geese is January 9 through January 31, or until such time as the Ballard quota zone is closed, whichever occurs first.

3. No hunting is permitted on Sundays.

4. No more than three (3) persons shall occupy a single blind or pit at the same time.

(b) General rules. There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from blinds and pits is furnished by the department must have his gun encased.

(c) Shooting hours. The shooting hours are one-half (½) hour before sunrise to 12 noon.

(2) Peal Wildlife Management Area. That portion of the Peal Wildlife Area as designated by signs is closed to the public from October 15 through March 15. No person, except agents of the department and the U.S. Fish and Wildlife Service, shall enter upon this portion of the Peal Wildlife Area during the closed period. Waterfowl hunting on Fish Lake will be permitted from designated locations only. No more than one (1) blind may be placed at each designated location and all blinds must be removed daily. No more than three (3) persons may occupy a blind at one time.

(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed area. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. Duncan Bay is closed to all activity. The Environmental Education Center is closed to waterfowl hunting.

(b) LBL permit. An annual LBL hunting permit is required for waterfowl hunting on all shoreline and inland areas. Shoreline areas are defined as all LBL areas along Kentucky and Barkley Lakes from the waters edge to twenty-five (25) yards above elevation 359 feet. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to Lake Barkley Wildlife Management Area regulations. Inland areas are defined as all areas above shoreline areas. No waterfowl hunting is permitted on inland areas during quota gun deer hunt days. Permanent blinds and pits are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds must be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area.

(a) Closed areas. Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, Fulton Bay will remain closed until March 15 and Honker Bay until March 1, or later if marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15. Recreation areas and access points are closed to hunting.

(b) Blinds and pits. Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a current Kentucky hunting license to the registration clerk before a permit will be issued. A permit will be issued for each permanent blind or pit and only one (1) permit will be

issued per hunter. Within a specified area around Duck Island Refuge permanent blinds shall remain within ten (10) yards of the assigned number blind marker for the entire waterfowl season. This area is bounded as follows: Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area must be temporary. Blind or pit permittees will have priority over their registered blinds or pits and may claim ownership by showing their permit. Permits are not transferable to other hunters. Permanent registered blinds or pits must not be locked to exclude other waterfowl hunters when not occupied. All blinds or pits must be in place no later than the day before the opening of the goose hunting season. All blinds and pits must be 200 yards apart and 200 yards from any refuge as designated by signs. Permanent blinds or pits must be removed no later than thirty (30) days after the close of the waterfowl season. Any extension must be approved by the Lake Barkley Resource Manager.

(5) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties. All recreation areas, operational areas and islands, except Mason Island, are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season.

(6) Green River Wildlife Management Area. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registrants must have a valid Kentucky hunting license. No more than one (1) blind permit will be issued per immediate family.

(7) Nolin, Rough River, and Buckhorn Wildlife Management Areas. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season.

(8) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Waterfowl hunting is permitted only from permanent blinds or pits registered by the department.

(b) Jenny Hole-Highland Creek Unit. Waterfowl hunting will be allowed from permanent blind or pit sites registered by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties.

(c) Blind or pit registration. Applicants for a permanent blind or pit must show a current Kentucky hunting license before a permit will be issued. The drawing for blind registration order will occur October 2, from 6 p.m. until 8 p.m. at the Henderson Community and Youth Center in Atkinson Park, Henderson. The drawing will be followed by registration in which hunters with the lowest numbers will receive first choice of blind or pit locations. A hunter may designate one (1) other person as a partner for registration. Two (2) nontransferable permits will be issued for each permanent blind or pit and only one (1) permit per hunter will be issued. Either of the permittees for a location will have priority over other users of their registered blinds or pits and may claim ownership by showing their permit. Registered blinds or pits must not be locked to exclude other hunters when not occupied by the permittee. Any waterfowl hunter may occupy any unoccupied blind or pit until claimed by the permittee. Only four (4) persons may occupy a blind or pit at one time. All blinds and pits must be 200 yards apart and at the designated locations. Permit holders who have not constructed their blind or pit at the designated location by November 20 will lose their location and the site may be assigned to another hunter. Blinds or pits and all construction materials must be removed from the area no later than thirty (30) days after the close of the waterfowl season.

(d) Shooting hours. One-half (½) hour before sunrise to 2 p.m.

(e) When the Ohio River reaches a level that requires boat access to the units, hunting will be allowed from boats spaced 200 yards apart, without regard to the registered blinds or pits.

(f) Sauerheber Unit of the Sloughs Wildlife Management Area located in Henderson County, except the Crenshaw and Duncan Tracts, will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. The privately owned inholding totaling 468 acres and known as the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east and the Sauerheber Unit of the Sloughs WMA, is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

(9) Ohio River Islands Wildlife Management Area. This area consists of Twin Sisters, Pryor, and Rondeau Islands and the mainland marsh area between Twin Sisters and Pryor Islands. Waterfowl blinds must be removed at the end of each day's hunting. All blinds must be 200 yards apart and only four (4) persons may occupy a blind at one time.

(10) Ohio River Waterfowl Refuge located in Livingston County will be closed to all hunting and molesting of waterfowl from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(11) Ohio River in the vicinity of the Ballard Wildlife Management Area. Waterfowl hunting is not permitted on the Ohio River from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(12) That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and Bruin Creek portions of Grayson Lake, is closed to all waterfowl hunting.

(13) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(14) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties is closed to all waterfowl hunting.

(15) Cane Creek Wildlife Management Area located in Laurel County is closed to all waterfowl hunting.

(16) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all waterfowl hunting.

(17) Redbird Wildlife Management Area located in Leslie and Clay Counties is closed to all waterfowl hunting.

(18) Mill Creek Wildlife Management Area located in Jackson County is closed to all waterfowl hunting.

(19) Ohio County south of Rough River, Muhlenberg County east of state route 181, and Butler County west of state route 79 are closed to goose hunting.

Section 8. Ballard and Henderson-Union Quota Zone Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union quota zones without first obtaining the appropriate waterfowl hunting permit, or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area is any area of land or water, used in whole or in part for the taking of migratory waterfowl where a monetary charge is made.

(b) A commercial waterfowl hunting permit issued by the department must be obtained by any person operating a commercial waterfowl hunting area. An annual fee will be charged for each commercial waterfowl hunting permit. Persons operating more than one (1) commercial waterfowl hunting area must obtain a permit for each individual area.

(c) A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit is required for each tract of land operated as a commercial waterfowl hunting area.

(2) Non-commercial waterfowl hunting areas.

(a) A non-commercial waterfowl hunting area is any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(b) Any person controlling the waterfowl hunting rights and privileges on a non-commercial waterfowl hunting area must obtain a free migratory goose hunting area permit. This permit shall expire annually on the day after the end of the waterfowl season.

(c) The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(d) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Services.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, it is permissible that only one (1) hunter of the party possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard quota zone may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056.

(b) Persons desiring commercial waterfowl hunting permits, migratory goose hunting area permits, or a season supply of goose harvest reporting forms for the Henderson-Union quota zone may apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

(c) Waterfowl harvest register forms for either quota zone will also be available from conservation officers in each zone and from the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

Section 9. Ballard and Henderson-Union Quota Zone Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original copy of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee must hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violations of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original copy of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee must hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or non-commercial waterfowl hunting areas in the Ballard or Henderson-Union quota zones must:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi

Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.
2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.
3. No later than Monday and Thursday of each week, mail or take the completed original copy of the waterfowl harvest register to the address indicated on the form.

Section 10. General Rules Concerning Waterfowl Hunting in the Ballard Quota Zone. (1) It is unlawful to hunt waterfowl except from a blind or a pit. For the purposes of this section, an anchored, stationary, or drifting boat from which waterfowl are hunted is considered to be a blind.

(2) It is unlawful to establish or use any blind or pit for the hunting of waterfowl within 100 yards of any other blind or pit.

(3) It is unlawful to establish or locate any blind or pit within fifty (50) yards of any property line.

(4) It is unlawful for more than five (5) persons, each having one (1) shotgun, to occupy a single blind or pit at the same time.

Section 11. 301 KAR 2:055, Pits and blinds restrictions, 301 KAR 2:088, Limits and seasons for taking migratory birds, and 301 KAR 3:070, Goose harvest reporting, are hereby repealed.

CARL E. KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDELL COMBS, Secretary
APPROVED BY AGENCY: October 2, 1984
FILED WITH LRC: October 9, 1984 at 2 p.m.

STATEMENT OF EMERGENCY

KRS 160.180 requires, effective July 13, 1984, that all new school board members elected after July 1, 1984, shall have completed at least the twelfth grade or the equivalent thereof as determined by an examination held under rules and regulations adopted by the State Board of Education. Although the GED examination is a recognized equivalent, pursuant to 705 KAR 7:030, such recognition is not specifically for the purposes of KRS 160.180. Since school board elections will be held in November, 1984, before the normal review process for ordinary regulations would be complete, an emergency regulation is necessary to clarify the situation for those candidates for election without a high school diploma.

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

MARTHA LAYNE COLLINS, Governor
Commonwealth of Kentucky
ALICE McDONALD
Superintendent of Public Instruction

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 1:120E. School board member educational qualifications.

RELATES TO: KRS 160.180
PURSUANT TO: KRS 156.070, 160.180
EFFECTIVE: September 21, 1984
NECESSITY AND FUNCTION: KRS 160.180 requires, effective July 13, 1984, that all new school board members elected after July 1, 1984, shall have completed at least the twelfth grade or the equivalent thereof as determined by an examination held under rules and regulations adopted by the State Board of Education. Although the GED examination is a recognized equivalent, pursuant to 705 KAR 7:030, such recognition is not specifically for the purposes of KRS 160.180. This regulation is necessary to clarify the situation for those candidates without a high school diploma.

Section 1. The following definitions apply in detemining qualification to serve on a local board of education, pursuant to KRS 16.180:

(1) A twelfth grade education means completion of high school and receipt of a high school diploma as issued by a local board of education within the guidelines of the curriculum requirements of the State Board of Education; or

(2) High school equivalency (GED) certificate as defined in 705 KAR 7:030.

ALICE McDONALD,
Superintendent of Public Instruction
APPROVED BY AGENCY: September 12, 1984
FILED WITH LRC: September 21, 1984 at 3 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 1:020E. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
PURSUANT TO: KRS 194.050
EFFECTIVE: September 19, 1984
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical services. This regulation sets forth the method for determining amounts payable by the department for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacists participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient

Drug List and provided to eligible recipients is limited to the lowest of:

(a) The maximum allowable cost (MAC) of the drug, if any, plus a dispensing fee; or

(b) The estimated acquisition cost (EAC) of the drug plus a dispensing fee; or

(c) The provider's usual and customary charge to the public for a like product and service.

(2) Reimbursement to skilled nursing and intermediate care facilities for drugs provided to eligible recipients is allowable in accordance with the following:

(a) The Kentucky Medical Assistance Program Outpatient Drug List (with additions and deletions thereto) shall be provided by the program to each participating facility, and for the drugs contained therein, the limits specified in subsection (1) of this section are applicable;

(b) For drugs not on the drug list, the maximum reimbursement shall be the lower of: for any drugs with a MAC set by the federal government, the MAC cost; and for all other drugs the published price of the drug as shown in the latest issue of the Drug Topics Red Book, including supplements, or the price shown in the appropriate Prescription Pricing Guide, depending on which is the latest available, plus a dispensing fee; or the provider's usual and customary charge to the public for a like product and service. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;

(c) A packaging cost allowance of not more than six (6) cents per dose may be added to the drug cost (if not already included) for unit dose packaged drugs. The packaging cost (up to six (6) cents), plus the drug cost is added to the dispensing fee to determine the total reimbursement amount for a unit dose packaged prescription;

(d) There shall be no more than two (2) dispensing fees allowed per drug within a thirty (30) day period, except for Schedules II, III, and IV controlled substances and for non-solid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug will be paid within a thirty (30) day period. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Non-solid dosage forms include all covered drug items other than oral tablets or capsule forms. Drug items or other related supplies purchased for routine use and which may be purchased without a prescription, including food supplements, are not reimbursable in SNFs or ICFs under the drug program, though the cost of such drug, supply item or food supplement, is an allowable cost for the facility with the cost computed in accordance with the state regulation covering medicaid reimbursement for the facility;

(e) Whenever possible, unused drugs paid for by the department shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the department as an offset against allowable ancillary cost; and

(f) Interim payments made to participating facilities for allowable drug costs shall be settled at actual allowable costs computed in accordance with the upper limits shown herein at the end of the facilities' fiscal year.

(3) Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 904 KAR 1:013.

Section 2. Physician Maximum Allowable Cost (MAC) Override. The MAC price limitation in Section 1 of this regulation shall not apply in any case where a physician certifies in his own handwriting that in his medical judgment, a specific covered brand is medically necessary for a particular patient. In such instances, reimbursement shall be based on the lower of the EAC plus a professional dispensing fee or the provider's usual and customary charge to the public for the drug.

Section 3. Dispensing Fees. *Effective July 1, 1984,* the dispensing fee shall be no more than *three (3) dollars and twenty-five (25) cents* [two (2) dollars and thirty-five (35) cents] per prescription for drugs reimbursed through the outpatient drug program, as shown in Section 1(1) of this regulation, where the covered drugs are limited to those contained on the Kentucky Medical Assistance Program Outpatient Drug List. The allowable dispensing fee shall be no more than *three (3) dollars and twenty-five (25) cents* [two (2) dollars and thirty-five (35) cents] (except for the additional amount for unit dose packaging as shown in Section 1(2)(c) of this regulation) for drugs reimbursed as part of the covered services of skilled nursing and intermediate care facilities, as shown in Section 1(2) of this regulation.

Section 4. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 7, 1984
FILED WITH LRC: September 19, 1984 at 4 p.m.

Amended Regulations Now In Effect

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
As Amended

601 KAR 13:050. Alcohol *Driver* Education [or Treatment] Program.

RELATES TO: KRS 189A.070, 189.160
PURSUANT TO: KRS 186.400, 186.560
EFFECTIVE: October 9, 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 *driver education* [or substance abuse] program. KRS 189A.070 allows the Transportation Cabinet to set standards for the course and curriculum of the [driver improvement program or] alcohol *driver* [and substance abuse] education [or treatment] program pursuant to KRS 186.560. This regulation is necessary to establish standards and criteria for such alcohol *driver education* [or substance abuse] programs. *However, this regulation does not apply to any services provided under KRS Chapters 210, 216B, or 222.*

Section 1. Definition. "*Course—alcohol driver* education [or treatment] program" means a course, *as defined in 601 KAR 13:030, a regulation promulgated* [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, *but does not include services under KRS Chapters 210, 216B, or 222.*

Section 2. No person shall offer, conduct or engage in the business of offering or conducting an alcohol *driver education* [or substance abuse] program pursuant to KRS 186.560 and 189A.070, *which purports to be an alcohol driver education program,* without obtaining the prior *written* approval of the Transportation Cabinet pursuant to the provisions of this administrative 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) A copy of the procedures and instruments used in making an assessment of the defendant's problem;
(3) [(2)] The name, address, and social security number of the instructors who shall conduct the course; [and]
(4) [(3)] A copy of the manual and course materials for the instructor's preparation course*; and*
(5) A statement certifying that the fee schedule submitted with the application reflects the actual costs.

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 *driving* offender in the Commonwealth of Kentucky;
(2) Recognizing the alcohol [or substance abuse] problem *related to traffic safety*;
(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] *DUI* 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 *person or* 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.

Section 7. Any agency or person submitting information to the Transportation Cabinet certifying that an individual has enrolled, completed, or failed to complete a program which is to be given credit as provided for in KRS 186.560(7), shall submit such information on the forms as required by the Transportation Cabinet.

FLOYD G. POORE, Secretary
APPROVED BY AGENCY: September 4, 1984
FILED WITH LRC: September 5, 1984 at 3 p.m.

COMPILER'S NOTE: The material incorporated by reference in this regulation was amended as agreed by the Subcommittee and agency on October 9. Therefore, this regulation is hereby republished as amended and now in effect.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Rehabilitation
As Amended

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
EFFECTIVE: October 9, 1984
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 *9* [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: September 13, 1984 at 11:50 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990
PURSUANT TO: KRS 194.050, 211.090
EFFECTIVE: October 9, 1984
NECESSITY AND FUNCTION: KRS 211.180 and 212.210 authorizes the Cabinet for Human Resources to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment.

Section 1. Citation of Regulation. This regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. The following definitions shall apply in the interpretation and enforcement of this regulation:

(1) "Cabinet" means the Cabinet for Human Resources, the local health departments having jurisdiction, and their duly designated representatives.

(2) "Local Board of Education" shall mean a duly elected or appointed Board, any private agency, or organization who operates, controls, or supervises a school or system of schools.

(3) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the twelfth (12) grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities would include only those areas used for school purposes.

(5) "Semi-permanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facilities and not made a fixed portion of any existing school structure.

Section 3. Water Supply. (1) The water supply shall be potable and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for the school shall be developed and approved in accordance with applicable requirements of the Natural Resources and Enviromental Protection Cabinet.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3) All drinking fountain installations shall meet the re-

quirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable water coolers may be used. Where portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and so designed that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

[(4) One (1) fountain per seventy-five (75) students or fraction thereof shall be provided.] If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage is not available, disposal shall be made into a private system designed, constructed, and operated in accordance with the requirements of the cabinet and the Natural Resources and Environmental Protection Cabinet.

(2) All plumbing shall comply with the State Plumbing Code and shall be designed and installed to prevent contamination of the water supply through cross-connections and backsiphonage from fixtures.

(3) All private sewage systems shall be operated in such a manner as to not create a nuisance or possible hazard to public health.

(4) All waste paper and solid waste shall be disposed of in such a manner as not to create a health or safety hazard.

(5) Containers shall be provided in all classrooms and hallways for storage of solid waste. All bulk solid waste shall be stored in containers, adequate in number, with tight-fitting lids. All bulk solid waste storage areas shall be so contructed and maintained as to prevent the entry and harborage of insects, rodents, and other vermin. All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities in accordance with the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and handwashing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair. Floors shall be of impervious construction; however, in dressing room areas only, carpeted floors may be provided if indoor-outdoor type carpeting is used.

(4) All restrooms and locker rooms shall be well lighted and ventilated to the outside air. A minimum of twenty (20) footcandles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Disposable paper towels, cloth roll-type dispenser towels, or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All handwashing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities in accordance to the requirements of the State Plumbing Code.

(7) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors. Schools with less than ten (10) students shall not be required to have self-closing doors. In those schools where closed-environment type HVAC systems are provided, self-closing doors are not required if effective odor and insect entry control is demonstrated. In school restroom and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be so installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor.

Task or Area	Footcandle Levels
Storage rooms	10
Hallways, stairways, auditoriums (during entry and exit)	20
General classrooms, gymnasiums, and enclosed swimming pools	50

In certain areas, such as at industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially where safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept clean and in good repair at all times when school is in session.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleaned using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and handwashing facilities free of water spillage.

[(3) Heating systems shall maintain a minimum temperature of sixty-eight (68) degrees Fahrenheit in classrooms and libraries. Registers, ducts, heating units, or panels shall be located as to maintain a uniform temperature throughout. All heating equipment shall be so designed, constructed, and installed to eliminate exposure of students to contact with heated surfaces and conform to the State Fire Marshal's requirements. Sufficient ventilation shall be provided to assure adequate fresh air.]

(3) [(4)] School buildings shall be maintained free of insect, or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be in accordance with applicable state laws and regulations.

(4) [(5)] Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, student's sack lunches, etc.

This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(5) [(6)] Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for such use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments. All exists shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

(a) Compresses and bandages:

1. One (1) inch compress on adhesive.
2. Assorted sterile bandage compresses in individual packages.
3. Triangular bandages. (2 x 2) and (4 x 4)
4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.

(b) Wire or thin board splints.
(c) Adhesive tape.
(d) Scissors.
(e) Forceps (two (2) inch splinter).
(f) Toothpicks.
(g) Paper cups.
(h) Iodine (mild).
(i) Aromatic spirits of ammonia.
(j) Thermometer.
(k) Soap.
(l) Vaseline.

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multi-Media or Standard First Aid courses so as to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected so as to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained in accordance with the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other non-approved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained in such a manner as to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Whenever a representative of the cabinet makes an inspection of a school, he shall record his findings on an official cabinet inspection report form and provide the principal or head teacher with a copy. The inspection report shall:

(a) Set forth the specific violation(s) found;
(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;
(c) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in further action being taken; and
(d) Advise the party inspected of its right to request a hearing before the local health department. The request shall be filed within ten (10) days of the completed inspection.

(3) Following a timely request for a hearing before the local health department, a hearing shall be conducted by the local health department at a time and place designated by it. Based upon the record of the hearing, the local health department shall make a written finding of fact and shall sustain, modify, or rescind any official notice or order appealed within thirty (30) days of the conclusion of the hearing. The hearing shall be recorded, but a transcript of the hearing need not be made unless the party requesting the transcription assumes the cost thereof and requests the transcription at the time of the hearing.

(4) Following inspections of school buildings and premises required by this regulation, the local health department or the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the other provisions of this regulation, facilities and equipment being used by existing schools on the effective date of this regulation, which do not fully meet the design and construction requirements of this regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: August 8, 1984
FILED WITH LRC: August 9, 1984 at noon

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
As Amended

904 KAR 5:160. Unemployment insurance fund payments.

RELATES TO: KRS 341.500, 341.510
PURSUANT TO: KRS *13A.100* [13.082], 194.050, 341.115, *341.493*
EFFECTIVE: October 9, 1984

NECESSITY AND FUNCTION: This regulation sets the procedure to be used between the Division *of* [for] Unemployment Insurance, the Treasurer of the Unemployment Insurance Fund, the *Finance and Administration Cabinet* [Department for Finance] and the Secretary of the *Cabinet* [Department] for Human Resources for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for such action signed by the Director of the Division *of* [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources.

Section 2. Requisitions from the state's account in the unemployment trust fund shall be made by the said treasurer within twenty-four (24) hours after the receipt of a written order for such requisition signed by the Director of the Division *of* [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources. Such withdrawals, when effected, shall immediately be deposited in the benefit account.

Section 3. (1) *A computerized tape and benefit payment register* [All vouchers] for the payment of benefits shall be prepared [on Form UI-419] *and presented to the Treasurer* and certified as correct to the *Finance and Administration Cabinet* [Department of Finance] on Form *DOA-19* [DES-500] by the Director of the Division *of* [for] Unemployment Insurance or such other person as may be designated by the commission and approved by the Secretary of the *Cabinet* [Department] for Human Resources. Such *computer tape and benefit payment register* [vouchers] shall show:

(a) Claimant's name;
(b) Claimant's Social Security Account Number;
(c) Amount of payment to be made;
(d) The compensable period for which payment is made;
(e) The serial number and the date of issuance;
[(f) The name of the depository bank against which they are drawn;] and
(f) [(g)] Such other information that from time to time shall be deemed necessary for proper control.

(2) After approval by the *Secretary* [Commissioner] of the *Finance and Administration Cabinet* [Department for Finance], *the Secretary shall present* [and such vouchers shall be presented] to the treasurer of the unemployment insurance fund *a warrant for the issuance of benefit payment vouchers.* Upon presentation, the treasurer shall *issue such benefit payment vouchers with* [cause] his signature [to be] affixed *thereto* [to such vouchers] and they shall become a demand upon the depository bank for payment of the amounts specified thereon.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: August 14, 1984
FILED WITH LRC: August 15, 1984 at Noon

Amended After Hearing

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

401 KAR 5:026. Classification of waters.

RELATES TO: KRS 224.020, 224.060
PURSUANT TO: KRS [13.082,] 224.033(17)
NECESSITY AND FUNCTION: This regulation applies the use classifications found in *Sections 5, 6, 7 and 8* [Section 4] of 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 3 of 401 KAR 5:031.

Section 1. Classification to Designated Uses. Waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 6. Until reclassified in accordance with the procedures of this regulation, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by the *cabinet* [department] pursuant to 401 KAR 5:031, Section 9. Outstanding resource waters may have unique water quality characteristics which shall be maintained even beyond the water's designated classification.

Section 2. Reclassification. *(1)* The reclassification of waters of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted only upon affirmative findings by the *cabinet* [department] pursuant to Sections 5 and 6 of this regulation. *Prior to adding or removing any use, the cabinet shall provide notice and an opportunity for a public hearing.*

(2) In reclassifying any water body, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(3) A use shall not be removed for a water body if that use is currently being attained, or if such uses will be attained by implementing effluent limitations required under 401 KAR 5:035 and 401 KAR 5:045 and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a water body is designated for a more stringent use than is currently being attained, the *cabinet* [department] *shall* [may] reclassify the water body [(segment)] upon demonstration that the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing "point" sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035 *and 401 KAR 5:045* and imposition of such extra controls would result in ["]substantial["] *and widespread* [adverse] economic and social impact.

[(5) Reclassifications adopted in accordance with this regulation shall be listed in Section 8 of this regulation.]

(5) [(6)] Implementation of this section will be consistent with 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. Except as provided in subsection (4) of this section, the priorities for reclassification of the waters of the Commonwealth are:

(1) Waters receiving (or proposed to receive) discharges from publicly-owned treatment works and/or serving as public water supply sources in the following order of priority:

(a) Any local units of government with a pending public construction permit application for installation or upgrading of a sewage treatment plant and/or public water treatment plant.

(b) Any local units of government in the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant, in an order of priority consistent with their priority project list rank.

(c) Any local units of government which request consideration prior to their entering into either their own construction project, a NPDES *or KPDES* permit action, or the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant.

(d) Other local units of government.

(2) Waters receiving (or proposed to receive) discharges from any other (private or semi-public) treatment works, in the following order of priority:

(a) New NPDES *or KPDES* permit applicants or proposed NPDES *or KPDES* permit modifications to waterways which may potentially be classified for a beneficial use of cold-water aquatic habitat.

(b) All other segments with private or semi-public facilities, on a first-come, first-serve basis.

(3) All other surface waters which do not have any existing or proposed point source dischargers.

(4) These priorities may be varied in a particular case pursuant to an administrative hearing.

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is outlined in Section 5.

(1) The *cabinet* [department] shall provide supporting documentation for the reclassification of waters on which are located (or proposed to be located) facilities which are either:

(a) Publicly-owned treatment works;

(b) Outstanding resource waters on publicly owned land; or

(c) New NPDES *or KPDES* permit applicants or proposed NPDES *or KPDES* permit modifications for waters which may potentially be classified for a beneficial use of outstanding resource waters.

(2) Any applicant filing for reclassification in circumvention of the priority system contained in Section 3 shall provide classification documentation for waters on which discharges from private or semi-public treatment works are located (or proposed to be located). In these cases the applicant sustains the burden of proof that the reclassification is appropriate and necessary.

(3) The *cabinet* [department] shall provide documentation for all other waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. This section outlines the documentation *which shall [may] be* required to support the reclassifications of surface waters of the Commonwealth *as follows*: [*The detail required will be subject to approval by the cabinet on a case-by-case basis.*]

(1) A USGS 7.5 minute map will be prepared showing those waters or stream segments to be classified. A description consisting of a river mile index with existing and proposed discharge points.

(2) Existing uses and water quality data for the proposed waters or stream segments for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the *cabinet* [department].

(3) General land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment for which the reclassification is proposed.

(4) The existing and designated uses of the receiving waters into which the segment under consideration discharges and the downstream uses of those receiving waters.

(5) General physical characteristics of the stream segment including, but not limited to width, depth, bottom composition, and slope.

(6) The frequency of occasions when there is no natural flow in the segment, the low flow in the segment and low flow in adjacent segments.

[(7) The first milepoint at which the low flow exceeds one (1) cfs.]

(7) [(8)] An assessment of the existing and potential aquatic life habitat in the stream segment under consideration and the adjacent upstream segment. The existing aquatic life in the area must be documented as well as an assessment of livestock and natural wildlife dependence upon the stream segment.

(8) [(9)] The existing and proposed designated uses for the stream segment(s) in question.

(9) [(10)] In addition, for downgrading, information must be supplied pursuant to Section 2, specifically:

(a) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation; or

(b) An assessment of the *substantial and widespread* [adverse] social and economic impacts of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures by which use *reclassifications* [classifications] will be assigned. Procedures for *reclassification* [designating the use classification] of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3.

(1) For each of the waters for which a reclassification is proposed, the *cabinet* [department] or applicant as defined in Section 4(2) of this regulation, shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the waters proposed for specified use classifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that said classification is appropriate;

(e) The appropriate water quality criteria for the segment(s) based on the proposed designated use(s);

(f) The treatment requirements proposed for discharges to the waters in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the waters in question;
(h) The procedure by which the designation will be made.
(2) Based upon all available information, the staff shall make its recommendation of use classifications of the waters in question to the secretary.
(3) The secretary shall cause to be prepared a list of segments and their classification to be published as an administrative regulation.
(4) Upon completing the review period and the procedures for promulgation under adminstrative rule making, all designated waters and their use classifications shall be *listed in Section 7 of this regulation* [attached as an addendum to this regulation].

Section 7. Stream Use Classifications. (1) Listed in the tables below are the use classifications for specific waters of the Commonwealth. The County column indicates the county in which the mouth of the stream is located. The identifying symbols for use classifications are as follows:

WAH— Warmwater Aquatic Habitat
CAH— Coldwater Aquatic Habitat
PCR— Primary Contact Recreation
SCR— Secondary Contact Recreation
DWS— Domestic Water Supply (applicable at existing points of public water supply withdrawal)
ORW— Outstanding Resource Water

(2) Waters not specifically listed in this section are designated for the use of warmwater aquatic habitat, primarily contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this regulation.

Section *8.* [7.] The provisions of this regulation shall not be severable with 401 KAR 5:029, 401 KAR 5:031, and 401 KAR 5:035.

LIST OF DESIGNATED STREAM USE CLASSIFICATIONS

BIG SANDY BASIN

Stream	Zone	County	Use Classification
Hood Creek	Source to Wheeler Branch	Lawrence	CAH, PCR, SCR

LITTLE SANDY RIVER BASIN

Stream	Zone	County	Use Classification
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR

TYGARTS CREEK BASIN

Stream	Zone	County	Use Classification
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR
Little Whiteoak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS
Whiteoak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR

LICKING RIVER BASIN

Stream	Zone	County	Use Classification
Craney Creek	Source to North Fork Licking River	Rowan/Morgan	CAH, PCR, SCR
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS

KENTUCKY RIVER BASIN

Stream	Zone	County	Use Classification
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR
East Fork Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR
Gladie Creek	Basin	Menifee	CAH, PCR, SCR
Middle Fork Red River	Source to River Mile 10.6 [access road 0.3 Miles above Rock Quarry]	Powell	CAH, PCR, SCR
Red River	River Mile 68.6 to River Mile 59.5	Menifee/Wolfe	WAH, PCR, SCR, ORW
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR
South Fork Elkhorn Creek	Source to North Fork Elkhorn Creek	Franklin	WAH, PCR, SCR
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR
Town Branch	Source to South Fork Elkhorn Creek	Fayette	WAH, PCR, SCR

SALT RIVER BASIN

Stream	Zone	County	Use Classification
Chenoweth Run	Source to Floyds Fork	Jefferson	WAH, PCR, SCR
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR

GREEN RIVER BASIN

Stream	Zone	County	Use Classification
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS
Buffalo Creek	Source to Green River (in Mammoth Cave National Park)	Edmonson	CAH, PCR, SCR
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR
Green River	River Mile 225.9 to River Mile 181.7	Edmonson/Hart	WAH, PCR, SCR, ORW
Green River	River Mile 181.7 to River Mile 168.0	Edmonson/Warren	WAH, PCR, SCR, DWS
Green River	River Mile 168.0 to River Mile 148.0	Butler/Warren	WAH, PCR, SCR, ORW

GREEN RIVER BASIN

Stream	Zone	County	Use Classification
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS
Lick Fork Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR
Underground River System	Mammoth Cave National Park	Edmonson/Hart/ Barren	CAH, PCR, SCR, ORW
Mud River	Source to Green River	Butler/Muhlenberg	WAH, PCR, SCR
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH, PCR, SCR
Trammel Fork	Source to Hwy 31E (River Mile 23.6)	Warren	CAH, PCR, SCR
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR

LOWER CUMBERLAND RIVER BASIN

Stream	Zone	County	Use Classification
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR

TENNESSEE RIVER BASIN

Stream	Zone	County	Use Classification
Tennessee River	River Mile 22.4 to River Mile 0.0 [11.0]	Livingston/McCracken [Marshall]	WAH, PCR, SCR, DWS [ORW]

TRADEWATER RIVER BASIN

Stream	Zone	County	Use Classification
Craborchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR
Tradewater River	Source to Ohio River	Crittenden	WAH, PCR, SCR

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

Stream	Zone	County	Use Classification
Ohio River	Big Sandy River (River Mile 664.15) to Mississippi River	Ballard	WAH, PCR, SCR, DWS
Doe Run Creek	Source to KY Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR
Sinking Creek	Source to Hwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR

UPPER CUMBERLAND RIVER BASIN

Stream	Zone	County	Use Classification
Bad Branch	Basin	Letcher	CAH, PCR, SCR
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR
Beaver Creek	Basin	McCreary	CAH, PCR, SCR
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR
Big South Fork Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary/Wayne	WAH, PCR, SCR, ORW
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR
Buck Creek	River Mile 47.7 to River Mile 10.5	Pulaski	WAH, PCR, SCR, ORW
Bunches Creek	Basin	Whitley	CAH, PCR, SCR
Cane Creek	Basin	Laurel	CAH, PCR, SCR
Cogur Fork	Basin	McCreary	CAH, PCR, SCR
Cumberland River	Cumberland Lake Dam to Highway 90 bridge (River Mile 426.5)	Russell/Cumberland	CAH, PCR, SCR, DWS
Cumberland River	River Mile 574.6 to River Mile 558.5	McCreary/Whitley	WAH, PCR, SCR, ORW
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR
Dogslaughter Creek	Basin	Whitley	CAH, PCR, SCR
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR
Horse Lick Creek	River Mile 12.3 to River Mile 0.0	Jackson	WAH, PCR, SCR, OR
Kelly Branch	Basin	Harlan	CAH, PCR, SCR
Kennedy Creek	River Mile 1.0 to River Mile 0.0	Wayne	WAH, PCR, SCR, ORW
Little South Fork Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR, ORW
Looney Creek	Basin	Harlan	CAH, PCR, SCR
Martin's Fork	Basin above Hwy 987 (River Mile 27.4)	Harlan	CAH, PCR, SCR, ORW
Middle Fork, Rockcastle River	River Mile 61.1 to River Mile 41.3	Jackson	WAH, PCR, SCR, ORW
Poor Fork Cumberland River	Basin above Jefferson National Forest Boundary (River Mile 720.55)	Letcher	CAH, PCR, SCR
Poor Fork Cumberland River	River Mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS
Razor Fork	Basin	Harlan	CAH, PCR, SCR
Rock Creek	Tennessee-Kentucky State Line to White Oak Creek	McCreary	CAH, PCR, SCR, ORW
Rockcastle River	River Mile 27.9 to River Mile 8.5	Laurel/Pulaski	WAH, PCR, SCR, ORW
Roundstone Creek	Source to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR
Shillalah Creek	Source to Cumberland Gap National Historical Park boundary	Bell	CAH, PCR, SCR
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
Sugar Run	Source to Cumberland Gap National Historical Park boundary	Bell	CAH, PCR, SCR

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: August 4, 1984
FILED WITH LRC: October 10, 1984 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald J. Challman (564-3410)

(1) Type and number of entities affected: Generally, the entities affected by this regulation irrespective of the use classification include: (1) wastewater treatment plants that discharge (or plan to discharge) to any of the segments; (2) fishing and recreation enthusiasts; (3) riparian landowners; and (4) the general public in and adjacent to the drainage basins. Basin population projections for 1980 as contained in the River Basin Management Plan for Kentucky show 434,541 persons inhabiting the Green River Basin; 607,165 persons in the Kentucky River Basin; 309,478 in the Licking River Basin; 964,704 in the Ohio River Basin (including the tradewater and the Little Sandy drainages); 103,222 in the Lower Cumberland Basin; 260,273 in the Upper Cumberland Basin; 186,466 persons in the Big Sandy River Basin; 55,861 in the Mississippi River Basin; 111,208 in the Tennessee River Basin; and 844, 108 persons in the Salt River Basin. Some portion of the above population will benefit from maintaining viable sport fishery resources (coldwater and warmwater), water-based recreation, community water supplies, and the unique and outstanding characteristics of Kentucky's Outstanding Resource Water segments. On the negative side, use classifications and criteria changes (where applicable) could create additional expenses from improvements in treatment capacity and capability. Some amount of revenue may be required to offset the expenses of local government should facility improvements be warranted in the future. General taxes, special assessments, or user rates might increase in order to subsidize necessary wastewater treatment and disposal services. A more complete explanation of entities affected by various use classifications follows.

Coldwater Aquatic Habitat Segments: Segments being considered for coldwater aquatic habitat use classifications are listed in Appendix A. A total of 9 entities discharge to coldwater segments listed in Appendix B—six (6) discharges in the Kentucky River Basin; one (1) discharge in the Green River Basin; and two (2) discharges to minor tributaries in the Ohio River Basin. All other coldwater segments not listed in Appendix B receive no discharges from wastewater treatment facilities.

Discharges to coldwater segments include package treatment plants owned and operated by quasi-public or non-profit entities (i.e., Breckinridge County Housing Authority). Sanitary waste systems of state, federal or local government-owned or operated facilities also discharge to various coldwater segments (i.e., Kentucky Department of Parks—Natural Bridge State Park, Irvington School and the U.S. Department of Agriculture Frenchburg CCC). Additionally, three commercial entities discharge to coldwater fishing segments including the Green River Sand and Gravel Company, Hinkle Contracting Co., and the Dressie Scotts Childrens Home. One other entity discharging to Swift Camp Creek could not be determined.

Additionally, some portion of the general population in the subject river basins will benefit from maintaining viable sport fishery resources. Although the exact number of anglers using each of the segments is not available, most have been reported by the Kentucky Department of Fish and Wildlife Resources (KDFWR) as being heavily used by area fishing enthusiasts. In some locations, 10 to 50 anglers were present during site visits by KDFWR personnel in 1981 and 1982. KDFWR contends that Kentucky's coldwater fisheries provide trout fishing opportunities to approximately 33,000 anglers annually. In 1980, the U.S. Fish and Wildlife Service reported that a total of 41,800 in-state residents (16 years or older) and 17,900 out-of-state residents fished for trout in Kentucky's coldwater streams. A detailed accounting by segment requires an in-depth analysis of users at each segment.

In summary, KDFWR contends that "these streams are valuable and very successful trout fisheries and should be recognized as such. A rough estimate is that the put-and-take trout streams comprise something less than 1.0% of the flowing stream miles in the Commonwealth." KDFWR further contends that the current use classifications do not place "undue constraints on other potential users of the stream resources of Kentucky."

Outstanding Resource Water Segments: Segments qaulifying for automatic inclusion as Outstanding Resource Waters include Kentucky's eight designated Wild Rivers and segments harboring federally designated threatened and endangered aquatic species. These segments are listed in Appendix C. Outstanding Resource Water segments receiving wastewater discharges are listed in Appendix D. A total of 35 entities discharge to Outstanding Resource Water segments—23 discharges in the Upper Cumberland River Basin and 12 discharges in the Tennessee River Basin. Outstanding Resource Water segments not listed in Appendix D receive no discharges from wastewater treatment facilities.

Discharges to Outstanding Resource Water segments include the municipal discharge of the city of McKee and the Jackson County Water Association treatment plant in Jackson County as well as package treatment plants serving Shopville, Eagle, McKee, Tyner, Eubank, Waynesburg, Kings Mountain, Highland and Ledbetter Elementary Schools. Sanitary waste systems of state or federally owned and operated facilities also discharge to various outstanding resource water segments including the Kentucky Department of Parks' Cumberland Falls and Kentucky Dam Village State Parks, the Kentucky Department of Transportation's Rt. 90 Roadside Park, and the Tennessee Valley Authority's Kentucky Dam hydroelectric facility. Additionally, nineteen (19) commercial interests that discharge to several outstanding resource water segments could be affected by this regulation. These include seven (7) manufacturers, one (1) stone quarry, one (1) trucking comany, one (1) motel, two (2) gas stations, one (1) camp and six (6) agricultural interests. Among the commercial interests affected by this regulation are the B. F. Goodrich Corporation, Penwalt Corporation, GAF Corporation, SKW Alloys, Airco Carbide, Air Products and Chemicals, and LWD, Inc., all of which discharge to the Tennessee River in Livingston or Marshall Counties.

Priority Segments Associated with Municipal Wastewater Treatment Construction Grants: Priority segments associated with Kentucky's Construction Grants Program (Section 205g of the Federal Water Pollution Control Act, PL 92-500 as amended) are listed in Appendix E along with the applicable use classifications. Virtually all of these segments receive wastewater discharges. A detailed listing of discharges appears in Appendix F. Finally, Appendix G provides a categorical breakdown of the type and number of entities affected by the regulatory use classification of Kentucky's priority segments.

A total of 457 entities discharge to Kentucky's priority segments associated with the municipal wastewater treat-

ment contruction grants program—the federal program administered by Kentucky to provide subsidies to local governments for the construction of treatment facilities. These 457 entities are composed of 21 facilities owned and operated by Kentucky or the federal government; 109 facilities owned and operated by Kentucky municipalities or counties; eleven (11) quasi-public institutions such as rural electric cooperatives and housing authorities; 75 retail or wholesale establishments; 42 manufacturers; 24 agricultural interests; 70 coal, sand, gravel, or oil operations; and 105 residential properties (mobile home parks, subdivisions, apartments, private residences). Of this total, 145 entities discharge to Floyds Fork and Mill Creek in the Salt River Basin in close proximity to the highly urbanized Louisville-Jefferson County area; 93 discharge to the Ohio River and the three tributary streams; 59 discharge to the four streams of the Upper Cumberland River Basin; 33 discharge to South Elkhorn and Silver Creeks in the Kentucky River basin; 19 discharge to Fleming and Slate Creeks in the Licking Basin; and 68 discharge to the mainstream of the Green River and the three other priority stream segments in the basin.

In addition to the above entities, approximately 1,041,640 Kentucky citizens will be impacted in a positive sense by the regulatory use classification of segments supporting community drinking water supplies. Numerical criteria (i.e., water quality standards) for assuring the bacteriological safety and chemical quality of drinking water sources will be applied at the point of withdrawal. Communities benefiting from the maintenance of water supply sources include the following: Ashland (Boyd Co.), Maysville (Mason Co.), Newport-Fort Thomas (Campbell Co.), Fort Mitchell (Kenton Co.), Louisville (Jefferson Co.), Henderson (Henderson Co.), Sturgis-Uniontown-Morgantown (Union Co.), Paducah (McCracken Co.), Mt. Vernon (Rockcastle Co.), Calhoun (McLean Co.), Morgantown (Butler Co.), Central City (Muhlenburg Co.), Brownsville (Edmonson Co.), Rockport (Ohio Co.), Rochester (Butler Co.), Livermore (McLean Co.), Hartford (Ohio Co.), and Owensboro (Daviess Co.). Suppliers who purchase water from the above public or semi-public water supplies and their customers will also benefit indirectly from the drinking water use classifications.

Finally, riparian landowners and fishing, hunting, swimming and boating enthusiasts will benefit from stream use classifications protective of water-based recreation and aquatic life.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs in the short-run should result above those (1) **already** being incurred by wastewater treatment facilities currently meeting their effluent limits; or (2) **projected** as necessary for the upgrade of wastewater treatment facilities not meeting their effluent limits. As these regulatory use classifications do **not** represent a change from current management assumptions regarding attainable water quality, treatment requirements, and facility compliance, no **new** costs should result above that already required of and anticipated by various entities affected by this regulation. This is not to say that the attainment of water quality commensurate with supporting beneficial uses in Kentucky does not have cost impacts. Very significant expenditures of public and private funds are spent annually for capital improvements and facility operations. The distinction being made here in that these costs are **not** new costs resulting from this regulation and the entities affected are aware of these continuing, long-standing facility compliance requirements.

In the context of the coldwater aquatic life and Outstanding Resource Water segments, the Cabinet intends to recognize the unique characteristics of these streams such as coldwater fishery resources, federally designated threatened and endangered species, designated Kentucky Wild Rivers, and their exceptional aesthetic, recreational, and ecological value. While recognizing these characteristics, the Cabinet believes that these uses can be maintained provided facility compliance with existing treatment requirements. Facilities discharging to coldwater segments will continue to treat wastewater at existing levels because of seasonal fluctuations in stream flow and temperature. The Cabinet also intends to take a strong antidegradation posture in regard to the Outstanding Resource Water segments, preventing any further degradation of existing water quality. However, no changes in treatment requirements are proposed at this time.

Finally, as with the above coldwater and outstanding resource water segments, no changes in applicable use classifications for segments associated with the municipal wastewater treatment facility construction grants program are proposed. Given the attainment of effluent limitations protective of warmwater aquatic life, primary and secondary contact recreation, and domestic drinking water at points of withdrawal, the prescribed uses in these segments can be maintained. This regulation by itself does not create **new** costs, although many facilities (entities) are already required to improve their systems and are therefore anticipating cost increases.

Savings to entities affected primarily relate to maintaining viable sport fishery resources, community water supplies, water-based recreation, and protecting rare and endangered species of fish, wildlife, and plants. The maintenance of community water supplies has already been mentioned in Section 1. Approximately, 1,110,491 Kentucky citizens will benefit from maintaining water supplies vital for domestic use. Maintenance of those water supplies is also vital for agriculture and industrial use, and for sustained economic growth and development of some 26 Kentucky communities.

In regard to the outstanding resource water, coldwater and warmwater aquatic life, and primary and secondary contact recreation use classifications, savings to entities relate primarily to preserving rare and endangered species and maintaining recreational potential and fishery resources. Aesthetics, recreational potential, and intrinsic value of preserving Kentucky's aquatic environment for present and future generations are appropriate and important parameters to investigate. Unfortunately, the degree and quality of a user's experience and the value society places on preserving our natural heritage are intangible qualities which are difficult to measure.

As background information relating to the outstanding resource water, aquatic life and recreation use classifications, the Kentucky Statewide Comprehensive Outdoor Recreation Plan (SCORP 1978) projects statewide increases in demand through 1995 for virtually all recreation activities related directly or indirectly to Kentucky's water resources. These activities include a 15% increase in the demand for hiking; 16% increase for camping; 19.4% increase for hunting (including waterfowl); 17.8% increase for fishing; 3.9% increase for boating; 14.7% increase for water skiing; 15.0% increase for sailing; and a 13.2% increase in demand for canoeing. In 1978 the SCORP reported on a statewide basis that 79% and 3% of the demand for small game and waterfowl hunting respectively, and 34% of the demand for canoeing was unmet. The sup-

ply of other recreation activities on a statewide basis exceeded the 1978 demand.

Regionally, the supply of versus the demand for recreational resources is mixed. The SCORP needs survey projected deficits in hiking trails and camping sites in 8 out of 15 Area Development Districts (ADDs). For hunting and particularly the small game component, all ADDs except the Gateway ADD were projeted to have shortages through 1995. Deficits were also projected for fishing in seven ADDs including the Kentuckiana, Gateway, FIVCO, Big Sandy, Kentucky River, Cumberland Valley and the Bluegrass ADDs. For fishing, deficits were projected for all ADDs except the Barren River, Buffalo Trace, Kentucky River, Cumberland Valley, and Lake Cumberland Area Development Districts.

Finally, for the urban counties of Boyd, Campbell, Kenton, Boone, Fayette, Jefferson, Daviess, Henderson, McCracken, Christian, and Warren, the SCORP projects deficits in all of the above recreation activities. In 1978, virtually all of the demand for canoeing in Kentucky's urban counties was unmet versus the 34% statewide demand that was unmet in the same year. Sixty-eight (68) percent of the demand for hiking; 8.8% of the demand for camping; 95.6 and 86.9% for small game and water fowl hunting, respectively; and 29.6% of the demand for fishing were also unmet as of 1978 in Kentucky's urbanizing counties.

The above information merely indicates the very serious shortages in fishing and water-based recreational resources the Commonwealth currently faces. The water quality program of Kentucky among other things, is integral to maintaining and expanding those resources. Basically, the program establishes minimum water quality standards that must be maintained to protect aquatic life and the health and safety of recreational users. In this manner, viable sport fishery resources and other forms of water-based recreation can be maintained to support Kentucky's growing fishing and tourism industry.

To further illustrate the importance of Kentucky's fishery resources, a significant amount of revenue is received by the state, local units of government, and the private sector in the form of privilege fees, licenses, tags, and permits; and expenses associated with bait and tackle, food and lodging, and transportation of in and out-of-state residents. In 1980 dollars, the U.S. Fish and Wildlife Service reported that $62.8 million were spent for food and lodging, representing the largest per sportsmen expenditure of approximtely $81.03. Other expenses for **all** 1980 fishing in the Commonwealth included $54.9 million in transportation expenses; $6.7 million in privilege fees; $5.6 million in licenses, tags, and permits; and $28.3 million in fishing equipment. Overall, Kentucky ranks 25th among the 50 states and the District of Columbia in the amount of expenditures associated with fishing.

Based on the average per-sportsman expenditures for the above cost categories, gross expenditures associated with **only** the subject coldwater (trout) streams can be estimated. The 53,700 sportsmen who fished for trout in 1980, cummulatively represented 512,500 days of participation or roughly 9½ days per year per angler according to the U.S. Fish and Wildlife Service. Given 53,700 anglers, approximately $4.3 million was spent by trout fishermen for food and lodging at $81.03 per fisherman; $3.8 million for transportation expenses at $70.80 per angler; $466,000 for privilege fees at $8.68 per angler; $1.9 million for bait and tackle at $36.53 per angler; and $389,862 for licenses, tags and permits at $7.26 per angler. Total expenditures associated with trout fishing approximated $10.9 million in 1980.

A word of caution is warranted here. The above estimation of expenditures for **all** fishing were based on a survey of Kentucky sportsmen. As surveys by their very nature attempt to categorize a given population by a representative sample, there are inherent limitations that can lead to prediction error or uncertainty. Extrapolation of the U.S. Fish and Wildlife Service's results for **all** fishermen to those who sought **only** trout must be reviewed cautiously. Nevertheless, it does help to illustrate the possible magnitude of revenues associated with Kentucky's trout streams. Actual figures are probably somewhat less than reported above.

In terms of Kentucky's eight Wild Rivers, the value individuals place on leisure and recreation activities also manifests itself in time, and tangible expenses for transportation, lodging and subsistence, equipment, and other fees. Tangible expenses associated with Kentucky's Wild Rivers are unknown at the present. In the absence of this more concrete measure of value, however, an examination of the time spent on the activity and probable opportunity costs can give some indication of value. Opportunity costs relate to the opportunities individuals are willing to forego for a day of river recreation such as lost wages and salaries.

If past user rates are indicative, there exists a rather significant demand for primitive recreation experiences like canoeing, fishing, hunting, hiking, and camping along Kentucky's relatively undisturbed Wild River corridors. Table 1 summarizes for five of the eight rivers present demand versus estimated carrying capacity for various recreation activities. These estimates are not directly comparable since (1) different periods of record were used for each segment, (2) user rates sometimes included stream mileage above or below Wild Rivers, and (3) management assumptions differed for various river courses.

Table 1: Estimated User Rates and Carrying Capacity for Select Kentucky Wild Rivers (Visitor-Days)

	Canoeing		Fishing		Hunting		Hiking		Camping	
	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity	User Rates	Carrying Capacity
Little South Fork	NR	6,636	NR	11,115	NR	357	NR	20,657	NR	NR
Cumberland River 1./	16,500	21,565	16,400	30,602	20,100	865	10,500	140,286	11,600	69,350
Rockcastle River 2./	960-1,415	16,512	3,300-10,934	992	1,200-6,624	1,336	606	9,460-47,300	4,400	8,600
Red River 3./	3,280	5,040	2,440	10,700	3,620	375	19,540	29,200	59,500	7,300
Rock Creek 4./	NR	NR	8,100	14,108	7,800	1,708	4,600	42,924	9,900	6,800
TOTALS	20,740-21,195		30,240-37,874		32,720-38,144		35,246		85,400	

Footnotes:

NR Not reported
1./ User rates based on 1977 visitor-days (includes public land only)
2./ Range estimates derived from two sources (1974 and 1978) - user rates include mileage not in Wild River
3./ User rates include all Wolfe County area of Daniel Boone National Forest in and adjacent to segment
4./ User rates based on 1975 visitor-days

Source: Kentucky Wild River Management Plans, Miller/Wihey/Lee Inc. (1980)

In general, the data indicates that user rates for canoeing and fishing are within the carrying capacity provided by the resource. With the exception of the Rockcastle River, canoeing and fishing can be expanded without degrading the resource or a user's experience. For hunting and hiking, user rates exceed available capacity in all of the segments with reported data. Finally, for camping, user pressure versus carrying capacity is mixed. In the scenic Red River Gorge, existing camping far outnumbers the available resource for this activity. Conversely, user rates for camping in the Cumberland and Rockcastle River corridors is within carrying capacity and could be expanded.

All totaled, past data indicates that from 20,740 to 21,195 visitor-days were recorded for canoeing; 30,240 to 37,874 visitor-days for fishing; 32,720 to 38,144 visitor-days for hunting; 35,246 visitor-days for hiking; and 85,400 visitor-days for camping along only four of Kentucky's eight Wild Rivers. Estimates for the other Wild Rivers are unavailable, however, these rivers are also regularly travelled and add to the above estimates. This is especially true of the Green Wild River which is situated wholly within the boundary of the Mammoth Cave National Park.

Although this analysis is not attempting to measure precisely opportunity costs, it is safe to assume that significant opportunity costs are represented by the above user rate figures. Even at the current minimum wage rate, opportunity costs for the above visitation rates easily runs into the millions of dollars and perhaps tens of millions of dollars if all eight rivers are included. This of course is a simplification of reality as obviously not all individuals are minimum wage earners. Additionally as mentioned earlier, opportunity costs are only one measure of value. Distance travelled to the site, lodging and subsistence at the site, privilege fees for the use of the resource, and other expenses must be included for a more accurate description of their worth and value. This information is unfortunately not available.

Regarding the rare and endangered species segments, no attempt is made here to estimate their worth or value to the Commonwealth or the nation. Suffice it to say that it is a national goal to protect species of fish, wildlife, and plants that are threatened with extinction, based on the Congressional finding "that these species are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people" (Endangered Species Act of 1973, PL 92-740 as amended). The Commonwealth of Kentucky is mandated by the federal government to protect species of fish, wildlife, and plants that are given this special distinction under PL 92-740.

2. Continuing costs or savings: Continuing costs or savings over the long term cannot be readily enumerated without a detailed analysis of regional economic development and population trends. Many of the segments being classified herein cannot assimilate the wastes associated with growth and development without a corresponding increase in the size and sophistication of wastewater operations and processes. Over time, more expensive treatment will undoubtedly be required and particularly for new dischargers in the basin.

Treatment requirements will increase for new source applicants and expansions of existing facilities, mandating advanced secondary treatment (where applicable) which employs more sophisticated unit processes for the reduction of carbonaceous and nitrogenous oxygen demanding materials and suspended solids. Advanced secondary treatment can ordinarily be achieved or exceeded by conventional activated sludge, fixed film lagoons, or land application processes, supplemented by some form of filtration, absorption, or chemical treatment. The exact treatment needs and costs of individual dischargers is case-specific depending on technology employed, waste characteristics and size. Therefore, aggregate costs cannot be determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)2 above.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation merely specifies legitimate stream uses for the subject segments as well as minimum criteria for protecting these uses. Use designations and numerical and narrative criteria (standards) provide the scientific and legal basis for the Commonwealth's water pollution control program. Standards are used in the (1)

determination and assignment of effluent limits by permit to individual dischargers, (2) evaluation of their performance through testing and monitoring, and (3) litigation to achieve compliance. The regulation does not by itself impose paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Changes as specified in this regulation will have no effect on the operation or costs of the Natural Resources and Environmental Protection Cabinet. The Cabinet has already implemented the requirements of this regulation and has internalized associated costs within normal budget appropriations. This regulation as it relates to the operation of the Cabinet does not change the basis for or the routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

2. Continuing costs or savings: Same as (2)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: The regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection Cabinet. Again, the regulation particularizes the legitimate uses of the subject waters, providing the basis for permitting, compliance monitoring, and enforcement commensurate with numerical and/or narrative criteria (standards) necessary for maintaining stream uses.

(3) Assessment of anticipated effect on state and local revenues: Regulatory changes could over the long-run increase the costs of state and local government for wastewater treatment in the subject basins. In the short-term, no impact on revenues will result since the designation does not change the wastewater treatment requirements for existing facilities necessary for maintenance of the designated uses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: **Coldwater Segments.** Within the context of the coldwater use classifications, no alternatives to their use classification were evaluated. The Commonwealth through the Kentucky Department of Fish and Wildlife Resources is committed to maintaining the viability of Kentucky's coldwater fishery resource. According to Statewide Comprehensive Outdoor Recreation Plan (1978), "one of the more important elements of Kentucky's fish management has been the stocking of state waters with native and adaptable non-native species. This serves the dual purpose of meeting the recreation demand for fishing while preventing the extinction of certain native game fish." As Kentucky's stocking program represents a significant expenditure of public funds and consequently generates considerable revenue for the state, local units of government, and the private sector, it is incumbent on the cabinet to safeguard this investment by maintaining water quality suitable for coldwater aquatic species.

Outstanding Resource Waters. The Kentucky Nature Preserves Commissions (KNPC) in their Outstanding Resource Water (ORW) recommendation to the Cabinet suggested a number of numerical and narrative criteria for protecting the "outstanding values" of the subject Outstanding Resource Water segments. Those recommendations included specific parametric limits for suspended solids, dissolved oxygen, pH, chloride, chlorine, ammonia, chromium, iron, copper, potassium and arsenic. The Division is working with the University of Kentucky to develop criteria for some of the parameters listed so it was considered premature to adopt KNPC's recommended limits. These issues are more appropriately addressed in conjunction with the triennial review of Kentucky's water quality standards regulations to be conducted in 1984.

The KNPC also proposed narrative criteria for various ORW segments including (a) prohibiting stream alterations and establishing a 20 meter (m) buffer strip on both banks; (b) prohibiting habitat alteration for the visual horizon or a minimum of 20 m; (c) stabilizing all denuded or developed shoreline areas; and (d) restrictions on withdrawal, diversion, or storage of water for agriculture, domestic, industrial, or any other public or private use. The Cabinet does not intend to associate any of the above narrative criteria with the stream use designations of the subject outstanding resource waters at least from a mandatory standpoint. This criteria would be largely unworkable within the Cabinet's legal mandate and the costs to entities affected could be significant. Item C above is supported by the Cabinet, however, it has been the policy of the Cabinet to stimulate greater soil erosion and sediment control by means of a voluntary program. Since this regulation carries the full force and effect of law, we are not in a position to mandate sediment and erosion control without being in conflict with existing policy statements. Last, suggested restrictions on withdrawal are in direct conflict with Kentucky's Riparian Rights Law (KRS Chapter 151). The Cabinet cannot enforce this suggested provision without changes in statutory authority.

Priority Segments Associated with Municipal Wastewater Treatment Construction Grants: Each of the segments with the exception of the mainstem Green and Ohio Rivers received an extensive use attainability survey prior to this designation. The purpose of the use attainability analysis was to characterize current water quality and to ascertain whether or not uses are currently being maintained, or given the application of waste treatment controls, could be attained in the future. According to regulation 401 KAR 5:026, Classification of waters, the department (cabinet) may classify a water body for lower uses, if and only if, "the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing point sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources . . . and imposition of such extra control would result in substantial adverse economic and social impact." It is the opinion of the Cabinet that the prescribed uses for these segments are either currently being maintained or could be attained in the future without "substantial adverse economic or social costs." Therefore, no other alternatives to these use classifications appear to be feasible or warranted.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations, or government policy are in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None provided.

Tiering:

Was tiering applied? No. Tiering was not applied since the regulation affects all wastewater treatment plants (discharges) in the basins irrespective of ownership, capacity, or unit processes or treatment employed.

APPENDIX A

COLDWATER AQUATIC HABITAT
STREAM USE CLASSIFICATION FOR WATERS OF THE COMMONWEALTH

Basin/Stream	Zone	County(ies)	Use Classification[1./]
I. Big Sandy Basin			
Hood Creek	Source to Wheeler Branch	Johnson/Lawrence	CAH, PCR, SCR
II. Upper Cumberland Basin			
Bad Branch	Basin	Letcher	CAH, PCR, SCR
Shillalah Creek	Source to Cumberland Gap NHP boundary	Bell	CAH, PCR, SCR
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR
Bunches Creek	Basin	Whitley	CAH, PCR, SCR
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR
Kelly Branch	Basin	Harlan	CAH, PCR, SCR
Cogur Fork	Basin	McCreary	CAH, PCR, SCR
Beaver Creek	Basin	McCreary	CAH, PCR, SCR
Cane Creek	Basin	Laurel	CAH, PCR, SCR
Dogslaughter Creek	Basin	Whitley	CAH, PCR, SCR
Rock Creek[2./]	Tennessee-Kentucky State Line to White Oak Creek	McCreary	CAH, PCR, SCR, ORW
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR
Cumberland River	Cumberland Lake Dam to Hwy 90 (RMI 426.5)	Russell	CAH, PCR, SCR, DWS
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR
Looney Creek	Basin	Harlan	CAH, PCR, SCR
Martin's Fork[2./]	Source to Hwy 987 (RMI 27.4)	Harlan	CAH, PCR, SCR, ORW
Poor Fork	Source to Jefferson National Forest Boundary (RMI 720.55)	Letcher	CAH, PCR, SCR
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
Sugar Run	Source to Cumberland Gap NHP boundary	Bell	CAH, PCR, SCR
Razor Fork	Basin	Harlan	CAH, PCR, SCR
III. Green River Basin			
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR
Lick Fork Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR
Roundstone Creek	Source to HWY 1140 (RMI 3.5)	Hart	CAH, PCR, SCR
Trammel Fork	Source to Hwy 31E (RMI 23.6)	Allen	CAH, PCR, SCR
Buffalo Creek	Source to Green River (in Mammoth Cave N.P.)	Edmonson	CAH, PCR, SCR
Mammoth Cave Park[2./]	Underground river system	Edmonson/Hart	CAH, PCR, SCR, ORW
IV. Kentucky River Basin			
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR
East Fork Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR
Middle Fork Red River	Source to access road 0.3 miles above Rock Quarry	Powell	CAH, PCR, SCR
Gladie Creek	Basin	Menifee	CAH, PCR, SCR
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR

Appendix A continued

V.	**Licking River Basin**			
	Craney Creek	Source to North Fork Licking River	Rowan	CAH, PCR, SCR
VI.	**Little Sandy River Basin**			
	Big Caney Creek	Source to Grayson Lake	Elliott/Rowan	CAH, PCR, SCR
	Laurel Creek	Source to Little Sandy River	Elliott/Rowan	CAH, PCR, SCR
VIII.	**Ohio River Basin Mainstem and Minor Tributaries**			
	Doe Run Creek	Source to KY Hwy 1628 (RMI 5.15)	Meade	CAH, PCR, SCR
	Sinking Creek	Source to Hwy 259 (RMI 4.0)	Breckinridge	CAH, PCR, SCR
XIII.	**Lower Cumberland Basin**			
	Casey Creek	Source to Little River	Christian/Trigg	CAH, PCR, SCR
	Skinframe Creek	Source to Livingston Creek	Caldwell/Lyon	CAH, PCR, SCR
	Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR

1./ Use classifications - CAH (Coldwater Aquatic Habitat), PCR (Primary Contact Recreation), SCR (Secondary Contact Recreation, ORW (Outstanding Resource Water);

2./ Will be designated as outstanding resource water with coldwater aquatic habitat criteria; segments harbor coldwater species, however, they also meet criteria for automatic inclusion under outstanding resource water use classification (i.e. federal endangered and threatened species or wild rivers); segments are listed in both Appendix A and C.

APPENDIX B

COLDWATER SEGMENTS RECEIVING WASTEWATER DISCHARGES

River Basin/Stream	County(ies)	Discharges
Green River Basin		
o Lynn Camp Creek	Hart	Green R. Sand & Gravel
Kentucky River Basin		
o Middle Fork Red River	Powell	Natural Bridge St. Park
o Swift Camp Creek	Wolfe	Discharge 007 (no listing)
o Chimney Top Creek	Menifee	USDA-Frenchburg CCC
	Powell	KY Dept. of Parks-Natural Bridge State Park
	Wolfe	Hinkle Contracting Co. Dessie Scotts Childrens Home
Ohio River Basin		
o Sinking Creek	Breckinridge	Breckinridge Co. Housing Authority Irvington School

APPENDIX C

Outstanding Resource Water
Stream Use Classification For Waters of the Commonwealth
(Automatic Inclusion Category)

Basin/Stream	Zone	County	Use Classification1./
I. **Upper Cumberland River Basin**			
Buck Creek	RMI 47.7 - 10.5	Pulaski	WAH, PCR, SCR, ORW (FE&T)
Horse Lick Creek	RMI 12.3 - 0.0	Jackson/Rockcastle	WAH, PCR, SCR, ORW (FE&T)
Kennedy Creek	RMI 1.0 - 0.0	Wayne	WAH, PCR, SCR, ORW (FE&T)
Middle Fork, Rockcastle River	RMI 61.1 - 41.3	Jackson/Laurel/Rockcastle	WAH, PCR, SCR, ORW (FE&T)
Big South Fork Cumberland River	RMI 55.2 - 45.0	McCreary	WAH, PCR, SCR, ORW (WR, FE&T)
Cumberland River	RMI 574.6 - 558.5	McCreary/Whitley	WAH, PCR, SCR, ORW (WR, FE&T)
Little South Fork Cumberland River	RMI 35.6 - 4.1	Wayne	WAH, PCR, SCR, ORW (WR, FE&T)
Martin's Fork Cumberland River2./	RMI 31.3 - 27.4	Harlan	CAH, PCR, SCR, ORW (WR)
Rock Creek2./	RMI 21.9 - 3.9	McCreary	CAH, PCR, SCR, ORW (WR)
Rockcastle River	RMI 27.9 - 8.5	Laurel/Pulaski/Rockcastle	WAH, PCR, SCR, ORW (WR, FE&T)

II. Green River Basin			
Green River	RMI 225.9 - 181.7	Edmonson/Hart	WAH, PCR, SCR, ORW (WR, FE&T)
Green River	RMI 168.0 - 148.0	Butler/Warren	WAH, PCR, SCR, ORW (FE&T)
Mammoth Cave Park[2./]	underground river system	Edmonson/Hart	CAH, PCR, SCR, ORW (FE&T)
III. Kentucky River Basin			
Red River	RMI 68.6 - 59.5	Menifee/Wolfe	WAH, PCR, SCR, ORW (WR)

1./ Use Classifications - CAH (Coldwater Aquatic Habitat), WAH (Warmwater Aquatic Habitat), PCR (Primary Contact Recreation), SCR (Secondary Contact Recreation), ORW (Oustanding Resource Water); criteria for ORW inclusion - FE&T (Federal Endangered and Treatened Species), WR (Wild River).

2./ Will be designated as Outstanding Resource Water with coldwater aquatic habitat criteria; segments harbor coldwater species, however, they also meet criteria for automatic inclusion under outstanding resource water use classifications (i.e., federal threatened and endangered species or wild rivers); segments are listed in both Appendix A and C.

APPENDIX D

OUTSTANDING RESOURCE WATERS (AUTOMATIC INCLUSION CATEGORY RECEIVING WASTEWATER DISCHARGES

River Basin/Stream	County(ies)	Discharges
Upper Cumberland River Basin		
o Cumberland River	Whitley	KY DOT-Rt. 90 Roadside Park KY Dept. of Parks-Cumberland Falls KY Dept. of Parks-Cumberland Falls WTP
	McCreary	Holiday Motor Lodge Eagle Elementary School
o Middle Fork, Rockcastle River	Jackson	McKee STP Camp Andrew Jackson McKee Elementary School Tyner Elementary School William's Gas and Grocery Jackson Co. Water Assn. - WTP
o Buck Creek	Pulaski	Shopville School Eubank Service Station Rt. 27 Eubank Elementary School KY Stone Co. (Somerset) Masten Dairy Farm Mullins Dairy Farm Hawkins Dairy Farm Henderson Dairy Farm
	Lincoln	Waynesburg Elementary School Kings Mountain Elem. School Highland Elementary School
	Rockcastle	Parsons Dairy Farm

APPENDIX E

STREAM USE CLASSIFICATIONS FOR PRIORITY STREAM SEGMENTS ASSOCIATED WITH KENTUCKY WASTEWATER TREATMENT CONSTRUCTION GRANTS

TYGARTS CREEK BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR
Little Whiteoak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS
Whiteoak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR

LICKING RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Fleming Creek	Source to Licking River	Fleming	WAH, PCR, SCR
Slate Creek	Source to Licking River	Bath/Montgomery/ Menifee	WAH, PCR, SCR, DWS

KENTUCKY RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR
South Fork Elkhorn Creek	Source to North Fork Elkhorn Creek	Franklin	WAH, PCR, SCR
Town Branch	Source to South Fork Elkhorn Creek	Fayette	WAH, PCR, SCR

SALT RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Chenoweth Run	Source to Floyds Fork	Jefferson	WAH, PCR, SCR
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR
Floyds Fork	Source to Salt River	Bullitt/Jefferson/ Shelby/Oldham/Henry	WAH, PCR, SCR
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR
Unnamed tributary to Mill Creek	Source to Mill Creek	Oldham	WAH, PCR, SCR

GREEN RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS
Cypress Creek	Source to Pond River	Muhlenberg/McClean	WAH, PCR, SCR
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR
Green River	River mile 181.7 to river mile 168.0	Edmonson/Warren	WAH, PCR, SCR, DWS
Green River	River mile 148.0 to Ohio River	Edmonson/Hart	WAH, PCR, SCR, DWS
Mud River	Source to Green River	Butler	WAH, PCR, SCR
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR

TRADEWATER RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Craborchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR
Tradewater River	Source to Ohio River	Crittenden	WAH, PCR, SCR

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

Stream	Zone	County	Use Classification and Additional Criteria
Ohio River	Big Sandy River (river mile 664.15) to Mississippi River		WAH, PCR, SCR, DWS

UPPER CUMBERLAND RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR
Poor Fork Cumberland River	River mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS
Roundstone Creek	Source to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR

TENNESSEE RIVER BASIN

Stream	Zone	County	Use Classification and Additional Criteria
Tennessee River	River 22.4 to 0.0	Livingston/McCracken	WAH, PCR, SCR, DWS

APPENDIX F

Priority Stream Segments Associated With Kentucky Wastewater Treatment Constructions Grants Receiving Wastewater Discharges

Basin/Stream	County	Discharges
Salt River Basin		
o Floyds Fork (including Chenoweth Run, Currys Fork, North Fork Currys Fork)	Bullitt	KYDOT Service Area Hebron Junior High School Brooks Elementary School Maryville Subdivision (1-4) Blue Lick Sewer Corp. Briarwood Village MHP F&E MHP L&N Golf Club Solite Quarry Lakeview MHP Bullitt Hills Subdivision Preston Parkway MHP Overdale Elementary School Oaks Mobile Home Park Hunters Hollow Subdivision Big Valley MHP Christman Dairy Farm Bullitt County Stone Co.
	Jefferson	Hollie Oak Club Treasure Island Larkgrove Subdivision McNeely Lake Village Subdivision Smith Residence Mattews Residence Entine Residence Maple Grove Sec. #5 Costello Residence Hidden Valley Motel Fairmont Gardens Liquor Pleasant Valley Subdivision Apple Valley Subdivision Beulah Land Estates Twin Cedars Steak House Zelma Fields Subdivision Cedar Heights MHP Gainsbourough Subdivision Dickerson Residence Weisenberger Residence Bates Elementary School Buchko Residence Birchwood Subdivision Cedar Lake Park Subdivision Williams Residence Fern Creek Sewer Company Taylor Residence Henson Residence Idlewood Subdivision Zuercher Residence Shelton Residence Farmgate Subdivision The Pines Subdivision Martin Marietta

Appendix F continued

	o Floyds Fork	Jefferson	Jump Residence Phillips Residence Lake of the Woods Subdivision Burns Residence Webber-Williams Residence Louisville-Jefferson County Chenoweth Park Montgomery Residence Chenoweth Hills Subdivision Laudherr Residence Obannon Residence Shiflet Residence Jeffersontown STP Jones Plastic & Engineering Corp. McGruder Residence Jones Residence Starrett Residence Sims Residence Cedar Ridge Presbyterian Camp Buechler Residence Orio Residence Conner Residence Cross Creek Subdivision Running Creek Subdivision Stallings Residence Furniture Showrooms Pearce Residence Eastwood Apts. Beckley Woods Subdivision Starview Estates Subdivision Steel Service Company Martin Marietta Co. (AVOCA) Metro. Sewer Dist. (Berrytown) Jefferson Co. Police Dept. (Academy) Murry Co. - AVOCA English Station Subdivision Middletown Industrial Park Douglas Hills Subdivision Holloway Ready Mix Middletown Vehicle Maint. Newman Residence Copperfield Subdivision
Salt River Basin	o Floyd's Fork cont.	Shelby	KYDOT - Corr. Inst. for Women KYDOT - I64 Rest Areas Whitney Young Job Corps Center Middletown MFG Miller Dairy
		Oldham	Cherrywood Apts. Thornhill MHP Crestwood Elementary School Kavanaugh Camp Egelhoff Residence Jones Residence Future Federal Residence Friendship Manor Nursing Home Ash Avenue Sewer Co. Country Village Subdivision Lockwood Estates Subdivision Green Valley Apts. Days Inn/Tasty World VCA Kentucky Standard Oil Service Station Cedar Lake Lodge Centerfield Elementary School Hartzell Residence Gambill Residence Lessig Residence Parrish Residence Lakewood Valley Subdivision Casey Residence Sunoco Service Station Golf Club of Kentucky Jack's Big O Dooling Residence Lasher Residence Evans Residence Laplant Residence Fleming Residence Smith Residence Sayer Residence Frederick Residence Arbuckle Residence Meadow Creek Farm Subdivision S. Oldham Church of God Sears Residence LaGrange STP

Appendix F continued

	Henry	Coombs Dairy Farm Gray Dairy Farm
o Mill Creek (including unnamed tributary to Mill Creek	Hardin	U.S. Army - Fort Knox Radcliff STP Airview Estates Airport Bowling Lanes Cen-Ken Stone Co. Hardin Co. North Elementary Sch.
Ohio River Basin		
o Craborchard/ Vaughn Ditch	Webster	City of Clay STP Dixon Coin Laundry Webster Co. High School Dixon Elementary School City of Providence (Shane Mfr.) Webster Co. Coal Co. (Bath House) Webster Co. Coal Co. (Prep. Plt) LWD Inc. Pyro Mining Co. #2 Circle B Coal Prep. Plant Ky. Baptist Day Care Center Pyro Mining Co.
	Union	Pyro Mining Co. #11 Pyro Mining Co. #2 Prep. Plant
o Tradewater River (including Montgomery Creek)	Hopkins	Dawson Springs STP U of K Dawson Springs 4-H Camp St. Charles School Nestier Corp. Dawson Springs WTP Chappell Coal Co. Prep. Plant
	Christian	KY Dept. of Parks - Pennyrile State Park Midway Truck Stop KY Dept. of Human Resources - Exceptieon Williamson Hog Farm
o Tygarts Creek (including Buffalo Creek, Little Whiteoak Creek and Whiteoak Creek)	Greenup	Greenup Co. Voc. School Columbia Hydrocarbon Didier - Taylor Mfr.
	Carter	Carter City Elementary School Upper Tygart Jr. High School Lawton Elementary School W. Carter High School Blevins Food Market Counts Cross Road Voc. School Kisers Standard Oil Station Olive Hill STP Blueberry Hills Subdivision East Kentucky Paving ACME Stone Co. Ken-More Stone Co. Oney Funeral Home
o Ohio River Mainstem	Boyd	Ashland WTP Armco Steel-Westworks Ashland STP
	Greenup	South Shore STP Dupont Wurtland Plant Worthington STP Greenup Co. Env. Comm. Chessie Systems RR (2) Boyd/Green San. Dist. #1
	Lewis	Vanceburg STP
	Mason	Maysville Utility Comm. WTP Maysville STP
	Bracken	Augusta STP
	Campbell	Newport WTP Kenton Co. Water Dist. #1
	Kenton	Campbell/Kenton San. Dist. #1
	Boone	Cincinnati G&E Power Plant

Appendix F continued

		Carroll	M&T Chemicals, Inc. DOW Corning Corp. KY Utilities-Ghent Power Plt.
		Jefferson	Louisville G&E Mill Creek (3) Louisville G&E Cane Run (5) Borden Chemical Co. Stauffer Chemical Co. American Synthetic Rubber Rohn & Haas Co. (2) Louisville G&E Paddys Run (5) Metro. Sewer Dist. (Morris Foreman) Ashland Oil Refinery Louisville Water Co. WTP B.E. Payne WTP
		Hardin	West Pont STP
		Meade	Brandenburg STP Olin Corp. Brandenburg (2)
		Breckinridge	Cloverport STP
		Hancock	Lewisport STP Natl. Southwire Alum. (2) Willanette Ind. - Corrug Med. Mill Willanette Ind. - Pulp Div.
		Daviess	Owensboro STP Owensboro Mun. Utilities Plant Owensboro Mun. Utilities - Elmer Smith (2) WR Grace - Owensboro
		Henderson	Custom Resins Henderson STP Henderson FWR & Light Henderson Mun. WTP
		Union	Sturgis WTP Uniontown WTP Morganfield WTP
		McCracken	Paducah WTP Paducah STP TVA-Shawnee Power Plant (3)
Upper Cumberland River Basin			
	o Beaver Creek	Wayne	Monticello STP Mago Construction Co. KOA Campground Nat. Guard Armory
	o Poor Fork	Harlan	Cumberland STP Harlan Machine & Electric Harlan Co. Steam and Stoker Benham STP Benham Coal Prep. Plant U.S. Steel Mine #33 U.S. Steel Mine #35 U.S. Steel Mine Corp. 7 U.S. Steel Mine Corp. #32 U.S. Steel Mine Corp. #37 Lynch STP
		Harlan	Ky. Dept. of Parks-Kingdome Come Ky. Dept. of Parks-Kingdome Come Lilly C. Shopping Center Cumberland STP Harlan Central Coal Prep. Plant Cumberland Valley RECC Lynch WTP
		Letcher	Scotia Coal Prep. Plant Scotia Coal Office Eolia Elementary School Scotia Coal Co. Bathhouse

Appendix F continued

o	Roundstone Creek	Rockcastle	Holiday Restaurant Kentuckian Motel Renfro Valley Exxon Southern Dollar Store Mt. Vernon STP Gregory Motel Beaker Oil Co. Renfro Valley Sunoco Shell Service Station KIWI Drive-In Renfro Valley Motel Mt. Vernon WTP Roundstone Elementary School Renfro Valley Standard Quality Gasoline Station Baker Restaurant RBS, Inc. Prep. Plant Holiday Motel Exit 59 Gulf Station Benle Coal Corp. Tipple
o	Yellow Creek	Bell	Pineville Health Care KY Virginia Stone Pineville WTP Ward Chapel MHP Old Fashion Dairy Bar Middlesboro STP Texaco Bulk Plant KY Water Service Bell Co. Coal Corp. Prep. Plant Middlesboro Tannery Pineville STP Ambleside LTD Development New Hignite Coal Co.
Kentucky River Basin			
o	South Elkhorn Creek (including Town Branch)	Fayette	R.J. Reynolds Co. Monticello Subdivision South Elkhorn Service Co. U.S. Army Natl. Guard-Lexington Keenelodge Motor Inn Keeneland Race Course Lexington STP (Town Branch) U.S. DOJ-Fed. Correctional Inst. KY DOJ-Blackburn Correctional Inst. American Can Company Ashland Bulk Plant Central Rock Co. Congleton Concrete Plant Texaco Bulk Plant Lex-Fayette Co. Land Fill
		Woodford	Midway STP KY DOT I-64 Rest Areas Stegall Residence
		Franklin	Mitchell MHP Bendix Westinghouse
o	Silver Creek	Madison	Brocklyn Subdivision KY DOT I-75 Rest Areas Executive Park Subdivision C&R Rentals/Richmond Tool & Die Okonite Cable Company AJAX Magnethermic U.S. Army-Bluegrass Army Depot Kingston Elementary Berea STP Silver Creek Elementary Pinnacle View HMP USDA Forest Service Office Appalachian Bldg. Supply Co.
Licking River Basin			
o	Fleming Creek	Fleming	Ashland Oil Bulk Plant #239 Flemingsburg STP Sorrells Restaurant Corey Adams Inc. Leit Laundry Flemingsburg WTP Carpenter Dairy Farm Hickerson Dairy Farm Gooding Dairy Farm Fox Valley Packing Browning Dairy Farm

Appendix F continued

o Slate Creek	Bath	Ridgeway Manor Nursing Home Owingsville STP
	Montgomery	Hope Hill Childrens Home Camargo First Church of God Camargo Elementary School Clay Residence Knox Hog Farm Montgomery San. Dist. #2
Green River Basin		
o Blacklick Creek/ Gasper River (including Wiggington Creek)	Logan	Auburn STP Caldwell Lace Leather Co.
	Warren	Ellis Hog Farm Bush Hog Farm Jones Dairy Farm
o Mud River	Butler	Third District Elementary School Natl. Eastern Petro. Durango Devel. Co. Grayson Flag Drilling Co. (Smith Lease) W.H. Greer (Ross Lease) W.H. Greer (Kirby Lease) W.H. Greer (Brown Lease) W.H. Greer (Anderson Lease) W.H. Greer (Anderson Lease) Billy Phillips Heirs Harper
	Logan	Lewisburg STP Chandlers Chapel Elementary School Griffen Industries, Inc. Russellville STP Emerson Electric IL Duncan Jr. Dist. Ky Stone-Russellville Rockwell Mfr. Co. Tradewater Land and Cattle Co. Brown Hog Farm TARCO Inc. (Tar Sand) Anaconda Ind. (Aluminum Rolling) Cresent Corp. (Tar Sand)
	Muhlenberg	KY Dept. of Parks (Lake Malone) Lake Malone Resort Lake Malone Elementary School Hughes-Kirk School Universal Operating Co. (Fleet Lease) Universal Operating Co. (McPherson Lease) Universal Operating Co. (Gibson Lease) David T Ford Brigance
	Todd	Sears Dairy Farm
o Cypress Creek	McLean	Island School Sacramento School
	Grayson	Moeller Hog Parlor
	Muhlenberg	Central City STP Carroll's Laundry Breman School Peabody Coal Prep. Plant Clements Job Corps Center ICGRR-Central City Peabody Coal-S.Star Mine Peabody Coal-Marmon Mine The Lake Peabody Coal-Star North Mine S and M Oil Co. (Paint Cr.) S and M Oil Co. (New Cypress) Creek Oil Co. (Vincent Lease)

Appendix F continued

o	Green River (RMI 148.0 to Ohio River)	Webster	Sebree STP Hillcrest MHP Polly's Cafe Texas Gas Trans. Hopkinsville Stone Co. Donan Engng. - Sebree Onton Dock Inc. Sebree WTP Big Rivers RECC Tapp Hogg Farm Deer Creek Prod (Hog Farm)
		Anderson	Henderson Co. Country Club Hebbordsville School KY DOT-Aubrun Prkway-Toll Spottsville Elementary (old) Anaconda Alum. Smelter McKechnic Hog Farm (Reynolds Metals) KBI Div./Cabot Ind. Spottsville Elementary
		Daviess	Sargho School Gardenside Subdivision Moose Lodge 756 O'Bryan Hog Farm Atherton's General Store Green Coal Prep. Plant
		McLean	Calhoun STP Calhoun WTP Charles Chips Livermore STP Barmet of KY Livia Plt. Mcelwain Hog Farm Island STP CW Lee Oil Co. CW Lee Oil Co. (Chissom lease) Brown Badget Coal Co.-Dock
		Muhlenberg	Peabody Coal Prep. Plt (Gibraltar) Ky. Utilities-Green River Station Peabody Coal Lab. (Central City) P&M Coal-Paradise Mine Central City WTP Peabody Coal-Sinclair #2 TVA-Paradise Power Plant United Coal Sales-Dock Peabody Coal-Martwick Mine
		Ohio	Peabody Coal Alston #3&#4 Webster Elementary Peabody Coal KenMine Western Engng.-Dock Peabody Coal Prep. Plant Big Rivers RECC
	Green River (RMI 181.7-168.0)	Butler	Fourth Dist. Elementary
		Edmonson	Brownsville STP Edmonson Co. WD Brownsville Kensyntar
		Warren	Young Dairy Bowling Green WTP
	Tennessee River	Livingston	Ledbetter Elementary School BRT Transfer Triennial Inc.
		Marshall	Penwalt Corp. GAF Corp. SKW Alloys, Inc. Airco Carbide Air Products & Chemicals B.F. Goodrich Chem. Co. KY. Dept. Parks - Kentucky Dam Village Wade Hog Parlor TVA-Kentucky Dam Hydro. Plant LWD, Inc. (Calvert City)

APPENDIX G

TYPE AND NUMBER OF ENTITIES ASSOCIATED WITH PRIORITY CONSTRUCTION GRANT SEGMENT USE DESIGNATIONS BY RIVER BASIN AND STREAM SEGMENT

	State or Federal Institutions	County or Municipal Institutions	Quasi-Public Institutions	Commercial Retail/Wholesale Establishments	Manufacturers	Agriculture Interests	Coal, Sand, & Gravel Mining/Oil Operations	Residential Properties
Salt River Basin								
o Floyds Fork	3	13	4	16	7	4	2	90
o Mill Creek	1	2	0	1	0	0	0	2
Ohio River Basin								
o Craborchard/Vaughn Ditch	0	3	1	2	1	0	7	0
o Tradewater River	2	3	1	1	1	1	1	0
o Tygarts Creek	0	7	0	4	2	0	2	1
o Ohio River Mainstem	1	30	0	7	15	0	0	0
Upper Cumberland River Basin								
o Beaver Creek	1	1	0	2	0	0	0	0
o Poor Fork	2	6	1	2	0	0	11	0
o Roundstone Creek	0	3	0	15	0	0	2	0
o Yellow Creek	0	4	0	3	1	0	3	2
Kentucky River Basin								
o South Elkhorn Creek	5	2	0	3	4	1	1	4
o Silver Creek	3	3	0	3	1	0	0	3
Licking River Basin								
o Fleming Creek	0	2	0	3	1	5	0	0
o Slate Creek	0	3	1	2	0	1	0	1
Green River Basin								
o Blacklick Creek/Gasper River	0	1	0	0	1	3	0	0
o Mud River	1	6	0	2	4	3	16	0
o Cypress Creek	1	4	0	3	0	1	7	0
o Green River (RMI 148.0-0)	1	12	3	6	3	5	18	2
o Green River (RMI 181.7-168.0)	0	4	0	0	1	0	0	0
Tennessee River								
o Tennessee River	2	1		1	7	1		
TOTALS	23	110	11	76	49	25	70	105

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Classifications of Waters
SPONSOR: Natural Resources and Environmental Protection Cabinet/Department for Environmental Protection/Division of Water
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement Mandate/Programmatic-Quality/Quantity
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT: Publicly-Owned Treatment works
FISCAL SUMMARY: Refer to fiscal explanation
Fiscal Estimates: 1984-85

MEASURE'S PURPOSE: Specifies use classifications and numerical/narrative criteris for coldwater aquatic habitat, outstanding resource waters (automatic inclusion category), and priority segments associated with municipal construction grants.
PROVISION/MECHANICS: Regulation specified that-warmwater aquatic habitat, coldwater aquatic habitat, primary contact recreation, secondary contact recreation, domestic drinking water (at points of withdrawal), and outstanding recource water use classifications shall be applied (where applicable) to certain streams of Kentucky. Streams included in this regulation include 38 segments supporting coldwater fishery resources, 14 outstanding resource water segments supporting threatened and endangered specied and/or wild river designations, and 31

priority segments associated with the Municipal Wastewater Treatment Facility Construction Grants Program. Numerical and/or narrative criteria (water quality standards) associated with each use classification provides the basis from which effluent limits are derived that must be met by waste dischargers in the basins in order to protect and maintain the legitimate benefical uses ofthe subject waters.

FISCAL EXPLANATION: (ATTACHMENT) Publicly-owned treatment works in the basins will be subject to limitations imposed by the use classifications and associated numerical and/or narrative criteria. In the short-run, no additional costs above that already required of local government should result since the criteria (standards) for maintaining legitimate uses was left unchagned frm previous classifications. In the long-run, many of the basins cannot assimilate the wastes associated with growth and development without a corresponding increase in thesize and sophistication of wastewater operations and pocesses. Treatment requirements over time may increase for new source applicants and expansions of existing facilities, mandating more expensive advanced secondary treatment. A detailed analysis of regional economic development and population growth would be required to determine treatment needs in each basin. Additionally, the exact treatment costs of individual dischargers is case-specific depending on technology employed, waste characteristics, and size. Therefore, aggregate costs cannot be determined.

TRANSPORTATION CABINET
Office of Personnel Management
Amended After Hearing

600 KAR 1:040. Separations and disciplinary procedures.

RELATES TO: KRS Chapter 18A, 174.080
PURSUANT TO: KRS 13A.100, 174.080
NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.100 requires any administrative body which is empowered to promulgate administrative regulations to prescribe the disciplinary procedures within the jurisdiction of the administrative body. This regulation is necessary to define and prescribe such disciplinary procedure within the Transportation Cabinet.

Section 1. Authority to Approve Separation and Disciplinary Action. The Secretary of the Transportation Cabinet has delegated the authority for the approval of employee separation and discipline as follows: (1) All employees. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to the separation by layoff, dismissal, disciplinary fine or letter of reprimand being imposed against any employee of this cabinet.

(2) District office employees. After the required approval has been obtained, the Chief Highway District Engineers are authorized to prepare and sign the required letter of notification advising the employee of his suspension, dismissal, layoff or disciplinary fine. The letter will then be delivered to the employee. The Chief Highway District Engineer and the Executive Director, Office of Personnel Management, are authorized to suspend employees with status under the Merit System for a specified period of time, provided that no other disciplinary action is taken regarding the act committed by the employee providing the requirements of this regulation are complied with. The Chief Highway District Engineer and the Executive Director, Office of Personnel Management, may suspend employees pending further determination as to the appropriate action to be taken against the employee provided the provisions of this regulation are complied with.

(3) Central office. In the case of a disciplinary measure against an employee in the Central Office, the division or office will prepare the required letter of notification advising the employee of his suspension, dismissal, layoff or disciplinary fine for the signature of the Executive Director of the Office of Personnel Management. After the signature has been obtained, the letter will be returned to the division or office for delivery to the employee.

Section 2. Responsibility of the Immediate Supervisor. The immediate supervisor will report employee delinquency, misconduct or incompetency in accordance with procedures established in this regulation, to the Chief Highway District Engineer, office head or division director as appropriate. The supervisor who fails to report employees who violate the policies and procedures of this cabinet or the provisions of the personnel laws and regulations because of friendship or other personal reasons, or because he does not agree with the disposition of certain similar cases, is evading his responsibility and may be disciplined.

Section 3. Separation and Disciplinary Procedures. (1) Infractions. Employees involved in trivial infractions should usually be reprimanded by their immediate supevisor at the time the infraction occurs, and in private. If the offense continues or the employee commits an act warranting suspension, dismissal or a disciplinary fine, the immediate supervisor shall complete, in triplicate, an Employee Disciplinary Report. The original shall be forwarded to the Chief Highway District Engineer, office head or division director, with the immediate supervisor's recommendation as to the punitive action to be taken. The duplicate copy of the Employee Disciplinary Report will be given to the employee. The third copy will be sent to the Executive Director, Office of Personnel Management, to be filed in the employee's personnel folder. The report shall be specific as to the time, place and persons by name, involved in the violation and a specific description of the unlawful act. In emergency situations, the immediate supervisor will contact the Chief Highway District Engineer, office head or division director or their designated representative of instructions by the most expeditious means available. Emergency situations are defined as those situations where the employee's action, attitude or condition may endanger the public, public property or personnel, or property of the Commonwealth, and action must be taken immediately to remove the employee from the work site.

(2) Investigations. The Chief Highway District Engineer, office head or division director may, upon advice that an employee under his jurisdiction has violated the policies or procedures of this cabinet or provisions of the personnel laws and rules, designate an individual to investigate the alleged violation. Such investigator will prepare a written report with his opinion as to the innocence or guilt of the employee. Upon receipt of the report and provided the Chief Highway District Engineer, office head or division director believes the employee should be fined, suspended or dismissed, a copy of the report with their recommendations will be submitted to the

Executive Director, Office of Personnel Management, for approval.

Section 4. Layoffs. The Transportation Cabinet must prepare and submit a layoff plan to the Commissioner of Personnel for approval prior to separation by layoff. The Office of Personnel Management is responsible for coordinating the preparation of the layoff plan and will submit the plan to the Department of Personnel for approval. Steps to be taken after approval has been obtained are listed below:

(1) The Transportation Cabinet may lay off an employee in the classified service whenever it is deemed necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date of the layoff and shall be given written notice of the reason for the layoff and of his right to appeal.

(2) Seniority, performance appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the Commissioner of Personnel. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The Transportation Cabinet and Personnel Department shall attempt to place the employee in another position for which the employee is qualified.

Section 5. Dismissals. (1) The Transportation Cabinet may remove any employee with status only for cause after furnishing the employee and the Commissioner of Personnel with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Specificity shall be determined by the nature of the violation and the time period over which the violation occurred.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing or upon request to appear personally with counsel and reply to the Secretary of Transportation or his deputy. An employee who desires to respond to the charges in writing or requests to appear personally will be advised to submit his written response or request to appear to the Executive Director, Office of Personnel Management. Such reply or request by employee shall not operate to stay the statutory time period for appeal to the Kentucky Personnel Board. All written responses to the charges or requests to appear personally will be responded to by the Executive Director, Office of Personnel Management, on behalf of the Secretary, Transportation Cabinet.

(3) An employee with status may appeal his dismissal to the Kentucky Personnel Board.

(4) A dismissed employee may be required to forfeit all annual leave.

(5) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 6. Separation During Probation Period. An employee may be separated without the right of appeal at any time during the probationary period.

Section 7. Resignation. An employee who desires to terminate his service with the state shall submit a written resignation to the Chief Highway District Engineer, office head or division director. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the resignation and be filed in his service record in the cabinet. Failure of an employee to give fourteen (14) calendar days notice with resignation may result in forfeiture of accrued annual leave. *A written notice of resignation signed by the employee or the party accepting his resignation is required. If no written notice of resignation is submitted disciplinary action will be taken.* [A Notice of Resignation may be signed by the employee. If the employee refuses to submit or sign a letter of resignation, the employee will be dismissed for unauthorized absenteeism in accordance with procedues established in this regulation.]

Section 8. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 9. Suspensions. The Transportation Cabinet, through the appointing authority, may suspend any employee without pay or other compensation as punishment for disciplinary cause. The appointing authority must provide the employee with written notice of the suspension stating the reasons therefor, a copy of which shall be sent to the Commissioner of Personnel and Executive Director of the Personnel Board. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. Any employee with status may appeal his suspension.

Section 10. Disciplinary Fines. The Transportation Cabinet may impose as a disciplinary measure a fine of not more than ten (10) days' pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence, and may not exceed a total of thirty (30) days' pay in any twelve (12) month period. The twelve (12) month period begins with the first day of the disciplinary fine. The employee shall be notified in writing by the cabinet of the reasons for the action, a copy of which shall be sent to the Commissioner of Personnel. In the case of an employee with status, such reasons shall be specific as to the statutory and/or regulatory violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action. The effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 11. Written Reprimands. The Transportation Cabint may give an employee a written reprimand as a single disciplinary measure or as a preliminary measure. The approval of the Executive Director, Office of Personnel Management, must be obtained prior to giving an employee a letter of reprimand. A copy of the written reprimand shall be placed in the employee's personnel file in the cabinet and a copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in

his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal. If an employee has not been charged with or has pending other disciplinary measures, the written reprimand may be removed from his personnel file after three (3) years from the date of the written reprimand.

Section 12. Separation and Disciplinary Actions for Non-Merit Employees. Employees appointed as seasonal, temporary, emergency or in other non-merit positions may be terminated without the right of appeal at any time while under such an appointment as they do not have status under the Merit System. This section does not pertain to employees who are serving their probationary period. In the event it becomes necessary to either suspend or terminate an employee serving under one of these appointments, the employee will be given a letter advising him of the effective date of the suspension or termination. Approval of the Executive Director, Office of Personnel Management, is required prior to effectuating the penalization. The letter of notification to the employee shall be prepared and signed by the Chief Highway District Engineer or the Executive Director of the Office of Personnel Management. *Any non-merit employee dismissed for cause shall have a right of appeal under 101 KAR 1:230.*

BETTY HAWKINS, Executive Director
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 9, 1984 at 11:30 a.m.

TRANSPORTATION CABINET
Personnel Management
Amended After Hearing

600 KAR 1:050. Employee conduct and working hours.

RELATES TO: KRS Chapter 18A, 174.080
PURSUANT TO: KRS 13A.100, 13A.130, 174.080
NECESSITY AND FUNCTION: KRS 174.080 allows the Secretary of the Transportation Cabinet to promulgate administrative regulations. KRS 13A.130 and 13A.100 prohibit internal policy concerning disciplinary procedures within the jurisdiction of the Transportation Cabinet. This regulation is necessary to set out specific examples of conduct considered by the Transportation Cabinet as warranting the disciplinary measures provided in KRS Chapter 18A.

Section 1. General. (1) Except as otherwise provided in this regulation, the tenure of an employee with status shall be based on good behavior and satisfactory performance of his duties. If an employee becomes involved in delinquency, misconduct or incompetency, such employee shall be disciplined in accordance with the procedures established by this regulation.

(2) Employees of the Transportation Cabinet are to conduct themselves in such a manner that the work of the Transportation Cabinet is efficiently and effectively accomplished. Employees shall be courteous and prompt in their dealings with both their fellow employees and members of the public with whom they come in contact. Employees shall refrain from any activity which could cause embarrassment to or reflect adversely on the Commonwealth.

Section 2. Illegal and Prohibited Conduct on the Job. While on the job employees are prohibited from engaging in any conduct which involves, or could be construed as involving, the violation of the criminal or penal laws of the Commonwealth. Specific acts, which may or may not be included in the above prohibition, which shall be prohibited include, but are not limited to, the following:

(1) Appearing on the job manifestly under the influence of alcohol, or a controlled substance, or other intoxicating substances, not therapeutically administered, to the degree that the employee may endanger himself or other persons or property, or unreasonably annoy persons in his vicinity. This includes drinking of intoxicating beverages on the job or the taking of a controlled substance not therapeutically administered, or working while under the influence of an intoxicating substance not therapeutically administered.

(2) Engaging in immoral acts, or immoral conduct while on the job.

(3) Striking or assaulting a fellow employee or member of the public while on the job.

(4) Misappropriation of state funds or property.

(5) Driving of motor vehicles in a reckless or irresponsible manner while on the job.

(6) The carrying of firearms, even though the firearm is exposed, by any employee at any time (on-duty or off-duty) on state controlled properties unless expressly authorized in the performance of an employee's official duty. Request for authorization to carry firearms in an official capacity must be made to the Executive Director, Office of Personnel Management. In the event a firearm is discharged on state property, whether authorized or unauthorized, accidentally or purposely, a detailed report of the incident shall be forwarded to the Executive Director, Office of Personnel Management.

Section 3. Work Hours and Time-Keeping Procedure. (1) The number of hours full-time employees in the Transportation Cabinet central office in Frankfort are required to work shall be uniform for all positions. The normal work hours shall be from 8 a.m. to 4:30 p.m., prevailing time, Monday through Friday, unless flextime has been approved in accordance with the provisions of this section.

(2) The work hours for the district office personnel shall be from 8 a.m. to 4:30 p.m., prevailing time, unless flextime has been approved in accordance with the provisions of this section. The Chief District Engineer of each Transportation Cabinet District office shall establish the work hours for all other district employees giving consideration to the requirements of their employment service.

(3) All employees of the Transportation Cabinet must sign a Daily Standard Time Roster provided in each work location. Employees assigned to field duty will maintain a daily time log using a time report form while away from their duty station. The completed time report will be turned in to the timekeeper when the employee returns to this duty station.

(4) Employees shall regularly and strictly observe the working hours required of them by the Transportation Cabinet. Habitual tardiness or absence from work stations shall constitute grounds for suspension or dismissal.

(5) With the approval of the appropriate commissioner or office head, a division, district, or office may utilize flextime in accordance with the following procedures:

(a) If a division, district, or office is authorized to use flextime, every employee in the division, district, or office may be allowed to use flextime.

(b) Flextime hours must be staggered at the discretion of the office head, division director or chief district engineer

to insure coverage of all sections during the normal prevailing work hours—8 a.m. to 4:30 p.m.

(c) Employees must begin and end work on the hour or half-hour.

(d) Employees may not be scheduled to begin work later than 9:00 a.m. or end work earlier than 3:00 p.m.

(e) Lunch hours may be one-half (½) hour, one (1) hour, or one and one-half (1½) hours in length.

(f) Salaried employees must be scheduled to work seven and one-half (7½) hours/day. Hourly employees must be scheduled to work eight (8) hours/day.

(g) The earliest scheduled time to begin work is 7:00 a.m. The latest scheduled time to end work is 5:30 p.m.

(h) A supervisor may be required during all hours. This will be left to the discretion of the office head, division director, or chief district engineer.

(i) Duration of flextime schedule. An employee may only change his/her working hours every three (3) months. Approval of the office head, division director, or chief district engineer is necessary.

(j) Once an employee's flextime hours have been set, the employee cannot change the hours for three (3) months. The office head, division director, or chief district engineer may stop flextime when necessary or if abuse of flextime occurs.

(k) Division directors and above cannot participate in flextime hours.

Section 4. Outside Employment. Employees shall not engage in any outside employment which would interfere with the performance of the employee's official duties and/or result in, or could reasonably be construed by others as involving a conflict of interest between the private interests of the employee and his official duties and responsibilities. Prior to engaging in any form of outside employment, an employee must obtain the approval of his immediate supervisor. The immediate supervisor shall not approve any request which would:

(1) Interfere with the efficient performance of the employee's official duties; or

(2) Bring discredit upon, or cause criticism of state government or the cabinet; or

(3) Reasonably result in, or reasonably be construed by others as involving, a conflict of interest, between the private interest of the employee and his official duties and responsibilities.

Section 5. Conflict of Interest. (1) General. Because of the nature of the trust placed in them by the citizens of the state, Transportation Cabinet employees must exercise special care to insure that their personal conduct is above reproach. Employees shall avoid conduct which could reasonably result in, or could reasonably be construed as involving, a conflict of interest of the employee and his official duties and responsibilities.

(2) Financial activities, compensation and gratuities. No employee shall solicit, accept, or agree to accept, directly or indirectly, anything of economic value as a gift, gratuity, or favor from any person, corporation, public agency, or group, which might reasonably be interpreted by others as being of such nature that it could affect the impartial perfomance of his duties. Although under the foregoing criteria, the acceptance of any gift, gratuity, or favor directly or indirectly affecting an employee's official responsibility would be clearly adverse to the public interest, this need not preclude the exchange of usual social courtesies which are entirely free from any improper or embarrassing implications. An employee may not:

(a) Have financial interests that conflict or may reasonably be construed by others to conflict with his responsibilities and duties as a cabinet employee; or

(b) Engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through his employment. Aside from these restrictions, an employee is free to engage in lawful financial transactions to the same extent as any other citizen.

(3) Real estate activities. The Transportation Cabinet must necessarily buy real estate to use as right-of-way for highways. Therefore, it is important that employees of the Kentucky Transportation Cabinet be extremely careful that their personal real estate transactions neither constitute a conflict of interest nor give the appearance to the public of constituting a conflict of interest. An employee in doubt as to whether a contemplated real estate transaction of personal service in the real estate field constitutes a conflict of interest, should ask the Director, Division of Right-of-Way, for an interpretation. No employee of the Kentucky Transportation Cabinet shall:

(a) Purchase, attempt to purchase, or offer to purchase any real property or any improvements which are to be removed from any real property, *if said property is located on the route or in close proximity to any highway project, during a period beginning with the first preliminary formulation of plans for the project and ending with the advertisement for construction of said project. This restriction does not apply to the purchase of improvements to real estate or real estate through publicly advertised auction or publicly advertised sealed bidding.* [on the route or in close proximity to any highway project where right-of-way is to be acquired, is being acquired, or has been recently acquired.]

(b) Act as agent for, or offer to act as agent for, the sale of any property in close proximity to any highway project *after the first preliminary plans for the project are formulated and prior to the advertising for construction of said highway project.* [where right-of-way is to be acquired, is being acquired, or has been recently acquired.]

(c) Make any appraisal, either for compensation or gratuity, of any property in the path of any highway construction project or in close proximity thereto for any person, firm, or corporation, other than for the Transportation Cabinet.

(d) Make any appraisal or provide any service for any person, firm, or corporation that provides service to, sells products to, or in any other manner does business with the Kentucky Transportation Cabinet if such appraisal or service, or the compensation resulting therefrom, could reasonably be construed as constituting a conflict of interest.

(e) Make any appraisal for, provide any service to or accept any compensation from any realtor, broker, appraiser, attorney, or other person, firm, or corporation providing personal services to the Kentucky Transportation Cabinet in the field of appraising, negotiation, or examining titles. This restriction shall also apply to those persons, firms and corporations who have in their recent past provided or may reasonably be expected in the future to provide such services to the Kentucky Transportation Cabinet.

(f) No supervisor may authorize any employee to make appraisals or engage in any other outside activity for profit unless that employee is performing his normal cabinet duties in a thoroughly satisfactory manner and in all instances recognizes and practices a "Transportation Cabinet comes first" policy.

(4) Inconsistent, incompatible, or in-conflict activities.

Transportation Cabinet personnel officers and employees shall not engage in any activity or enterprise which is inconsistent, incompatible, or in conflict with their assigned duties and responsiblities or with their duties, functions, and responsibilities of the cabinet office, division, district, or unit for which they are working. An activity or enterprise is deemed incompatible, inconsistent, or in conflict which involves:

(a) The use of state time, facilities, equipment, and supplies for private gain or advantage.

(b) The receipt or acceptance of money or any other type of consideration from anyone other than the state for the performance of an act which would be required or would be expected to be rendered during the regular course and hours of employment or a fulfillment of duties and responsibilities as a cabinet employee.

(c) The performance of an act, other than in the capacity as a cabinet employee, which may later be directly or indirectly subject to the control, inspection, review, audit, or enforcement by the employee or the cabinet unit to which he may be working.

(d) The soliciting or accepting of personal loans or money or property from any person, other than a bank or other financial institution, who does business with or performs services for the cabinet or any division thereof. This policy includes contractual and contractual business and services relationships.

(e) The providing of confidential information to any person or persons to whom the issuance of such information has not been authorized by the cabinet.

(f) The providing of names of Transportation Cabinet personnel for a mailing list from office records unless specific authorization is received from the Office of Personnel Management.

Section 6. Disciplinary Action. Violation of any of the provisions of this regulation shall constitute grounds for suspension or dismissal from the Transportation Cabinet.

BETTY HAWKINS, Executive Director
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 9, 1984 at 11:30 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
Amended After Hearing

902 KAR 20:008. Health facilities and health service; licensure procedures and fee schedule.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.105

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the requirements for obtaining a license to operate a health facility and establishes the fee schedule for a license.

Section 1. Definitions. "Volunteer service" means an ambulance service in which none of the drivers or attendants receive any compensation for their work.

Section 2. Licenses. (1) No person shall operate any health facility in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) All applications for licensure shall be filed with the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular health facility. Compliance with the board's regulations shall be ascertained through on-site inspections of the health facility by members of the board or their authorized representatives. Any regulatory violation identified during such inspections will be transmitted in writing to the health facility by the inspecting agency. The health facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. Such plan shall specify the date(s) by which each of the violations will be corrected. Following a review of the plan, the inspecting agency shall notify the health facility in writing of the acceptability of the plan. In instances where a portion or all of the plan is unacceptable, the inspecting agency shall specify the reasons for the unacceptability. In such cases, the health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) All licensees shall, as a condition of licensure or relicensure, be in compliance with the following reporting requirements unless otherwise exempted by statute. All licensees shall have submitted completed routine reports (e.g., annual and semi-annual reports) approved by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and any special reports required by the board concerning health services provided, health manpower employed, or utilization of health services within forty-five (45) days of the date the request is mailed. Licensees shall be notified of the content of routine (e.g., annual and semi-annual reports) reports as follows: [at least forty-five (45) days in advance of the requests.]

(a) The content of the reports for calendar year 1984 for hospitals, long term care facilities and home health agencies shall be limited to information requested for the year of 1983 by the Health and Vital Statistics Branch of the Division of State Health Planning, Department for Health Services. The cabinet shall make recommendations to the board on the content of the calendar year 1984 reports at the November 21, 1984, meeting of the board;

(b) Licensees shall be notified of the content of reports for calendar year 1985 upon approval of the content by the board. The cabinet shall make recommendations to the board on the content of the calendar year 1985 reports no later than the January 16, 1985 meeting of the board; and

(c) Licensees shall be notified of the content of reports for calendar year 1986 and subsequent years no later than October 1 of the previous year. The cabinet shall recommend the content of the reports to the board no later than the date of the regularly scheduled September meeting of the board.

(6) [(5)] Unannounced inspections shall be conducted on complaint allegations. Such inspections shall be conducted utilizing the procedures outlined under subsection (4) of this section.

(7) [(6)] All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(8) [(7)] Licenses may be renewed upon [:

(a)] payment of the prescribed fee *and* [;
(b)] compliance with the applicable provisions of the Certificate of Need and Licensure Board's regulations. [; and]

[(c) Submission of reports including health services provided, health manpower employed and utilization of health services and any special reports required by the Board. Commencing with the required reports for calendar year 1982, the data elements to be included in said reports will be circulated for notification at least sixty (60) days in advance of the requests.]

(9) [(8)] Each license to operate shall be issued only for the person or persons and premises, including the number of beds (if applicable), named in the application and shall not be transferable. A new application shall be filed in the event of change of ownership. A change of ownership for licenses shall be deemed to occur when more than fifty percent (50%) of an existing facility or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one (1) person from another.

(10) [(9)] Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(11) [(10)] There shall be full disclosure to the licensure board of the name and address (and any changes) of:

(a) Each person having (directly or indirectly) ownership interest of ten (10) percent or more in the facility;

(b) Each officer and director of the corporation, where a facility is organized as a corporation; and

(c) Each partner, where a facility is organized as a partnership.

Section 3. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:

	License Type	Rate
(a)	Hospitals plans and specifications review (initial through final)	$.025 per sq. ft. $1,500 maximum
(b)	All other health facilities plans and specifications review (initial through final)	$.025 per sq. ft. $800 maximum

(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:

	License Type	Rate
(a)	Air ambulance services	$ 50
(b)	Alternative birth centers	$100
(c)	Ambulatory surgical center	$100
(d)	Chemical dependency treatment service	$ 5 per bed $100/minimum $1,000/maximum
(e)	Community mental health and mental retardation center	$500
(f)	Day health care	$ 50
(g)	Ambulance service (Per non-volunteer service) (Per volunteer service)	$ 50 $ 10
(h)	Family care homes	$ 25
(i)	Group homes mentally retarded/developmentally disabled	$ 50
(j)	Health maintenance organizations	$ 3 per 100 patients
(k)	Home health agencies	$ 50
(l)	Homemaker	$ 50
(m)	Hospice	$ 10
(n)	Hospitals	
	1. Accredited hospital	$ 3 per bed $100/minimum $1,000/maximum
	2. Non-accredited hospital	$ 5 per bed $100/minimum $1,000/maximum
(o)	Intermediate care facilities	$ 5 per bed $100/minimum $1,000/maximum
(p)	Medical detoxification services	No fee
(q)	Non-emergency health transportation service (per service)	$ 50
(r)	Nursing home	$ 5 per bed $100/minimum $1,000/maximum
(s)	Outpatient clinics and ambulatory care facilities	$100
(t)	Personal care home	$ 2 per bed $50/minimum $500/maximum
(u)	Primary care center	$100 $15 per satellite
(v)	Psychiatric hospitals	
	1. Accredited	$ 3 per bed $100/minimum $1,000/maximum
	2. Non-accredited hospital	$ 5 per bed $100/minimum $1,000/maximum
(w)	Rehabilitation (outpatient)	$ 50
(x)	Renal dialysis	$ 10 per station
(y)	Rural health clinics	$ 50
(z)	Skilled nursing facilities	$ 5 per bed $100/minimum $1,000/maximum

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 3, 1984
FILED WITH LRC: October 5, 1984 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther, Divsiion of State Health Planning, Department for Health Services

(1) Type and number of entities affected: All licensed health facilities, primarily hospitals, long term care facilities and home health agencies.

(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: This amendment will not result in any additional reports required.

(2) Effects on the promulgating administrative body: This will allow the Cabinet and the Board to obtain data on a more timely basis.

(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: Under the existing requirement some health facilities are not submitting reports on a timely basis. This provision establishes a deadline and makes compliance a condition of licensure rather than annual relicensure.

(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? Nop. As a rule, licensure regulations for health services are not subject to tiering.

Proposed Amendments

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Ophthalmic Dispensers
(Proposed Amendment)

201 KAR 13:040. Licensing; application, examination; temporary permit.

RELATES TO: KRS 326.020
PURSUANT TO: KRS 326.020(3)
NECESSITY AND FUNCTION: To provide for the licensure of ophthalmic dispensers, apprentice ophthalmic dispensers, and temporary permits; specification of requirements for licensure and applications for licenses.

Section 1. Application for License. (1) Any person wishing to obtain the right to practice the vocation of dispensing optician, under KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers upon Form O.D. No. 3-1, adopted by the board May 17, 1966, herein filed by reference; and shall obtain a license from the board permitting him to do so. Unless such person shall have obtained a license as above stated, it shall be unlawful for him to engage in the vocation of dispensing optician within the state of Kentucky, and he shall be subject to the penalties prescribed under the statute. The board shall admit to *the practical* examination any candidate who pays the required *non-refundable* fee of twenty-five (25) dollars and who submits satisfactory evidence to the board, under oath, that he qualifies under the rules and regulations adopted by the board.

(2) The applicant must be eighteen (18) years of age, of good moral character, a citizen of the United States, *must have passed all examinations required by the board prior to admission to the practical examination,* and must have completed at least two (2) years of satisfactory training and experience in ophthalmic dispensing under the supervision of a licensed ophthalmic dispenser, licensed physician, osteopath or optometrist, or be a graduate of an accepted school of ophthalmic dispensing. Such two (2) years of training and experience must be as a licensed apprentice as hereinafter mentioned unless it is clearly shown to the satisfaction of the board, in its sole discretion, that the training and experience of the applicant is otherwise satisfactory, provided, however, that any time spent in a recognized school for ophthalmic dispensing or in an optical laboratory as an ophthalmic technician may, at the discretion of the board, be considered as a part of the two (2) years of satisfactory training and experience.

(3) Applicants for *the practical* examination may be examined by the board upon matters pertaining to mathematics and physics, ophthalmic materials and laboratory techniques, ophthalmic optics, ophthalmic dispensing and practical subjects. When any applicant passes the necessary examination and meets the qualifications as set forth, the board shall issue a license to such person to engage in the vocation of dispensing optician within the state of Kentucky. Such license shall be subject to renewal on December 31 of each year, upon renewal application Form No. 2, herein filed by reference, and upon the payment of the required fee of ten (10) dollars, wherein a renewal certificate will be issued.

(4) An applicant training as an apprentice must pass the examination within five (5) years of expiration of his apprenticeship term. Those having fully served an apprenticeship prior to August 3, 1983 shall be deemed to begin the five (5) year period as of that date.

Section 2. Appprentice License Application. For the encouragement and protection of those desiring to enter the vocation of ophthalmic dispensing as defined by KRS Chapter 326, the board has provided an apprentice training program. Applicants for apprentice licenses shall use the same form provided for other applicants in Section 1 of this regulation, and shall answer all questions except Sections (3) and (7)a, b, c, and d. All other questions must be filled out and the applicant must show good faith of his intention to learn the vocation of ophthalmic dispensing; that he intends to apply himself to the subject; and that at the earliest date after the expiration of two (2) years apprenticeship training, he intends to apply to the board for examination to be licensed as an ophthalmic dispenser. Since this program is designed to encourage apprenticeship training and the development of highly skilled and well qualified ophthalmic dispensers, the board will limit the number of apprentices to not more than one (1) apprentice to each active registered ophthalmic dispenser in each establishment.

Section 3. Temporary Permit Application. The board may issue a temporary permit to qualified ophthalmic dispensers, who otherwise would qualify for a license but are in the state on a temporary basis or who have not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board. Applicants for temporary permits shall use the same form provided for other applicants in Section 1 of this regulation, and shall answer only Sec-

tions (7) and (8). The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance. The fee for a temporary permit shall be ten (10) dollars, which amount shall accompany the application.

Section 4. Board Action, Notification. (1) The board will act only upon those applications which are completely and properly filled out by the applicant. Each applicant must enclose the prescribed license fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.

(2) Applicants will be notified of the action of the board; and, if favorable, when and where the examination will be held.

FRANK B. SANNING, Chairman
APPROVED BY AGENCY: September 28, 1984
FILED BY LRC: October 12, 1984 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on the 21st day of November, 1984, at 8:30 a.m., Jefferson Community College, Louisville Vocational Building, Room LV210, Louisville, Kentucky. Those interested in attending this hearing shall contact in writing: Frank B. Sanning, Chairman, Kentucky Board of Ophthalmic Dispensers, 640 Fourth Avenue, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Frank B. Sanning, Chairman
(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. N/A

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Ophthalmic Dispensers
(Proposed Amendment)

201 KAR 13:050. Apprentices.

RELATES TO: KRS 326.020
PURSUANT TO: KRS 326.020(3)
NECESSITY AND FUNCTION: To define the terms "Ophthalmic Dispenser" and "Apprentice Ophthalmic Dispenser" and to specify the rights, powers and duties of the board with regard to Apprentice Ophthalmic Dispensers.

Section 1. Definition. The term "ophthalmic dispenser" whenever used herein includes licensed physician, osteopath, optometrist and opticians licensed under KRS Chapter 326.

Section 2. Apprentices. (1) An apprentice ophthalmic dispenser is one who is in training for the vocation of ophthalmic dispenser and as such dispenses ophthalmic lenses, frames and appurtenances thereto to the intended wearer only under the supervision of a licensed ophthalmic dispenser.

(2) An apprentice license shall be required of any person who is not a licensed ophthalmic dispenser, but who is in training as such and while in training works under the direct supervision of a licensed ophthalmic dispenser, and whose duties require that he perform such services as would be normally performed by a licensed ophthalmic dispenser. The board may revoke the apprentice license at any time should either the employer or the apprentice fail to carry out the provisions of this regulation.

(3) A licensed apprentice ophthalmic dispenser shall at all times work under the direct supervision and in the same establishment with a licensed ophthalmic dispenser, and the licensed ophthalmic dispenser shall be responsible for his acts.

(4) The board will issue a license for a period ending December 31 of the current year, at which time an application for renewal may be presented. The chairman is authorized to issue a temporary apprentice permit which becomes effective as a permanent apprentice license pending approval by the board at its next regular meeting. The permanent apprentice license may be renewed for a period of one (1) year upon application to the board, accompanied by the required fee of ten (10) dollars [and a progress report on the progress of the apprentice, signed by the sponsor giving evidence satisfactory to the board that the applicant is diligently and conscientiously applying himself to the subject]. In the event the apprentice's employment under the sponsoring ophthalmic dispenser is terminated for any reason, the board shall be notified immediately.

(5) In the interest of adequate training for the apprentice, the sponsor shall file an outline of the training schedule he proposes to follow in training the apprentice, and also shall satisfy the board that the facilities of his establishment are sufficient to provide such training. The board will limit the number of apprentices to not more than one (1) apprentice to each licensed ophthalmic dispenser in each establishment.

(6) The applicant must give evidence of good faith in his intention to learn the vocation of ophthalmic dispensing; that he intends to apply himself to the subject and at the earliest date possible, after the expiration of two (2) years apprenticeship training, he intends to apply to the board

for examination and to qualify as a licensed ophthalmic dispenser. The board may at its discretion refuse to further renew the license should he fail to carry out the provisions of this regulation.

(7) The board will supply, upon request, a list of approved textbooks covering the subjects on which the examination will be based. For those who are interested in attending a college or university where courses of ophthalmic dispensing are offered, the board will cooperate and offer every assistance possible.

(8) The board reserves the right to reject the application for an apprentice license or to rescind a license already issued if, upon inspection, it is found that any of the requirements for an apprentice license, as outlined in the rules and regulations are being violated. All rules of conduct, paying of fees, suspensions or revocations and all other rules and regulations not specifically excluding apprentice licenses shall apply to the licensed apprentice ophthalmic dispenser.

FRANK B. SANNING, Chairman
APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 12, 1984 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1984, at 8:30 a.m., Jefferson Community College, Louisville Vocational Building, Room LV210, Louisville, Kentucky 40202. Those interested in attending this hearing shall contact in writing by November 16, 1984: Frank B. Sanning, Chairman, Kentucky Board of Ophthalmic Dispensers, 640 Fourth Avenue, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Frank B. Sanning, Chairman
(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. N/A

CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:010. Objectives of physical therapy.

RELATES TO: KRS 327.010
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: The practice of physical therapy is rapidly evolving and changing in purpose and scope. The purpose of this regulation is to clearly define the desired goals of physical therapy and the permissible means of achieving these goals. In this manner, standards of physical therapy practice are clearly established and may be used to evaluate particular treatments which have been used or which may later evolve.

Section 1. Goals of the patient-physical therapy unit include maintaining health, preserving functional capacity, and in the presence of impairment, developing or reestablishing function through carefully planned, and implemented programs. In order to reach these objectives, the physical therapist evaluates patients, identifies problems, plans programs, and provides direct treatment.

Section 2. Patient Management. Adequate, effective, and efficient patient care is the ultimate goal of physical therapy. The physical therapist evaluates each patient, and determines those ways in which he can contribute to total health management. With consent from referring physician, osteopath, podiatrist, [or] dentist *or chiropractor* he then plans and implements a treatment program, reevaluating and making modifications as necessary.

JEAN M. DAVIS, Chairman
APPROVED BY AGENCY: September 24, 1984
FILED WITH LRC: September 28, 1984 at Noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held November 26, 1984 at 10 a.m. in Room 110 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by November 21, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary
(1) Type and number of entities affected: All physical therapists licensed 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:
(2) Effects on the promulgating administrative body: No effect on Board of Physical Therapy.
(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: No change.
(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 identified.
(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 amendment brings this regulation into compliance with KRS 327.010 as amended in the 1984 session of the legislature.

Tiering:
Was tiering applied? No. Physical therapists licensed under this chapter all have equal rights and responsibilities.

CABINET OF THE GENERAL GOVERNMENT
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:020. Method of applying for licensure.

RELATES TO: KRS 327.050
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: Describes the criteria for eligibility, methods, and procedures of applying for a license to practice physical therapy in Kentucky.

Section 1. To be eligible for licensure application by examination, the person must have successfully completed the academic and clinical requirements of an approved physical therapy program and have been granted certification of completion by the educational administrator of that program. All physical therapy programs approved by the American Physical Therapy Association [or the Council on Allied Health Education and Accreditation of the American Medical Association] are periodically reviewed and updated for approval by the Kentucky State Board of Physical Therapy. To be eligible for licensure application by endorsement, the person must have, in addition, successfully completed an examination approved by the board.

Section 2. A person desiring to practice as a physical therapist in Kentucky must apply to the Kentucky State Board of Physical Therapy. An application form will be sent to the applicant by the executive secretary of the board. When the completed application, certification of completion of academic and clinical portions of an approved physical therapy program and the correct fee relative to that person's vehicle of licensure have been received, the applicant becomes an official candidate for licensure. At the request of the applicant, the board shall determine the necessity of conducting a hearing regarding licensure qualification of said applicant.

Section 3. Three (3) types of candidates will be accepted for licensure:
(1) Examination;
(2) Endorsement; and
(3) Reinstatement.

JEAN M. DAVIS, Chairman
APPROVED BY AGENCY: September 24, 1984
FILED WITH LRC: September 28, 1984 at Noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held November 26, 1984 at 10 a.m. in Room 110 of the Capitol Annex. Those interested in attending this hearing shall contact in writing by November 21, 1984: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly, Executive Secretary
(1) Type and number of entities affected: N/A
(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: No change.
(2) Effects on the promulgating administrative body:
(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: No change. 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 identified.
(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 American Physical Therapy Association is now the only recognized national accrediting agency for physical therapy programs.

Tiering:
Was tiering applied? No. Physical therapists licensed under this chapter all have equal rights and responsibilities.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:050. Land Between the Lakes hunting rules.

RELATES TO: KRS *150.010,* 150.025, 150.170, 150.176, 150.250, 150.360, 150.640
PURSUANT TO: KRS [13.082,] 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to general rules for hunting on Land Between the Lakes [Wildlife Management Area] located in Trigg and Lyon Counties. This regulation is necessary *to specify special hunting rules at Land Between the Lakes. The function of this regulation is to authorize conservation officers to enforce special Land Between the Lakes hunting rules.* [in order for the department's conservation officers to enforce the hunting regulations in cooperation with Tennessee Valley Authorities on Land Between the Lakes Wildlife Management Area located in Trigg and Todd Counties. The function of this regulation is to provide law enforcement services which fall within the jurisdiction of the department. This amendment is necessary to include changes in hunting regulations.]

Section 1. License Requirements. *(1) Kentucky hunting license and Land Between the Lakes permit.* Hunters must have a valid Kentucky hunting license and a Land Between the Lakes hunting permit. Permits are non-transferable and may be cancelled if rules and regulations are violated and/or if the holder is deemed to be careless with firearms. Permits may be obtained at any information station or at the Administrative Office, Golden Pond, KY 42231. Deer hunters must also possess a valid Kentucky deer tag and turkey hunters must possess a valid Kentucky turkey tag.

(2) Hunter Safety Training Certificate Requirement. Every person born on or after January 1, 1969, before hunting shall possess, in addition to all other licenses and permits required, proof of satisfactory completion of a state approved hunter education course except that this provision shall not apply to persons under ten (10) years of age accompanied by an adult at least twenty-one (21) years of age. For the purposes of this section, accompanied is defined as being able to take immediate control of the hunting device. This provision shall take effect April 1, 1985.

Section 2. General Rules. (1) Except as noted, state and federal regulations apply.

(2) No species of wildlife may be molested or taken except as authorized.

(3) Target practice is prohibited except at designated ranges and with Land Between the Lakes approval.

(4) Operation of motorized vehicles is permitted only within the designated off-road vehicle area and on Land Between the Lakes system roads. System roads are those designated by signs and listed on a map available free of charge from Land Between the Lakes. Driving in woods, fields, foot trails, or utility rights of way and blocking access to roads, trails, and entryways is prohibited.

Section 3. Weapons. (1) Prohibitions.

(a) Handguns cannot be carried on the person except during legal hunting hours while participating in authorized gun deer hunts.

(b) Firearms and bows and arrows, except target and fishing arrows, are prohibited except during authorized hunts. At this time, hunters must have in their possession a valid Land Between the Lakes hunting permit and a valid Kentucky hunting license, or as otherwise authorized by special regulations. Such hunters camping on Land Between the Lakes may possess legal hunting weapons one (1) day prior to and one (1) day after an authorized hunt.

(c) Firearms transported in vehicles during authorized hunts must be unloaded in both chamber and magazine.

(2) Permitted Weapons. All firearms and archery equipment must conform to statewide regulations unless specified in other regulations.

Section 4. Hunting and Chasing. (1) Hunting is prohibited in all developed public use areas, safety zones and posted areas unless so designated by signs.

(2) A state permit is required to conduct a field trial.

(3) Fox chasing and raccoon and opossum hunting are permitted from sunset to sunrise during the designated season. Raccoons may be bagged or taken for restocking. Dogs must be removed by eight (8) a.m.

(4) Quota deer hunting applicants are selected for each hunt by computerized drawing. Hunters must hunt only during the period assigned to them and must stay within their assigned hunt area. Hunt areas and dates cannot be changed. Only one (1) application is permitted per hunter. Groups are limited to no more than five (5) hunters. For quota hunts, other than special youth hunts, hunters under sixteen (16) must apply and hunt with an adult. Some Land Between the Lakes permits for deer may be valid for antlerless deer or either sex deer as specified on the permit.

(5) Deer and turkey bow hunting. During the concurrent deer and turkey bow hunting season, only those turkey hunters who have a valid Kentucky deer and turkey hunting permit are eligible to hunt turkey. Turkey hunting will not be allowed after the hunter is successful in bagging a deer. This rule applies only when deer and turkey are hunted concurrently and not during the spring turkey only hunting season. Turkey taken must be checked out and have both a Land Between the Lakes permanent game tag and a Kentucky turkey tag attached before being removed from the area.

Section 5. Tree Stands. Nails, spikes, tree climbers, screw-in devices, or wire must not be used for attaching stands or for climbing trees. No existing permanent stands may be used. Portable stands and climbing devices that do not injure trees may be used. Portable stands may be placed on trees no more than two (2) weeks prior to the hunting season and must be removed within one (1) week following a hunting season or portion of a split season. All portable stands must display the name and address of the owner.

CARL E. KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDELL COMBS, Secretary

APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 9, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 21, 1984, at 2 p.m. in the meeting room of the Kentucky Department of Fish and Wildlife, No. 1 Game Farm Road, Frankfort, Kentucky 40601. Those interested in attending this hearing shall contact in writing by November 16, 1984: James S. Durell, Assistant Director, Wildlife Division, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Land Between the Lakes (LBL) has about 900 deer hunters and about 1100 other hunters under sixteen (16) years of age. Allowing for duplications, these probably include 1600 individuals. About 60% to 75% of these already have hunter safety certificates. So about 400 to 640 youth would be involved each year.

(a) Direct and indirect costs or savings to those affected: Transportation to and from three (3) or four (4) classes would be about the only expense. Classes are held throughout the state. Statistics indicate that hunter safety training significantly decreases accidents.

1. First year: Trainees would have the minor costs of transportation to the classes.

2. Continuing costs or savings: Some states have found an increase in hunting after training courses. This generates more profit for motels, restaurants and stores.

3. Additional factors increasing or decreasing costs (note any effects upon competition): As a new crop of young hunters get the safety training required by the Tennessee Valley Authority, hunting accidents should decrease each year.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: New demand will be increased for hunter training courses—a desirable effect. Some time was devoted to developing and publishing this amendment. Some extra time will be devoted to enforcement.

(a) Direct and indirect costs or savings: Primary cost will be conducting classes for hunter safety training. This budget is about $100 for each trainee. New rules like this tend to increase the size of classes, without increasing the cost per class.

1. First year: Estimated cost for enforcement is about $6,400. Cost for preparing and publishing this amendment is about $500. Cost for training more students would be low, because they are simply added to classes scheduled.

2. Continuing costs or savings: Same as first year, except for $500 cost of promulgating this amendment.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Virtually no extra paper work will be required.

(3) Assessment of anticipated effect on state and local revenues: Most effects of this amendment on local revenues would not be measurable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Another age group could have been selected—those born after 1965, or after 1972. But 1968 seemed like a reasonable cut-off date.

(b) Omitting training entirely was another alternative. But gun safety training is being required by more than thirty (30) states. There is an apparent obligation to cut down the number of hunting accidents.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(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. Since this amendment applies only to hunters who hunt on LBL and were born after 1968, tiering appears impractical.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Land Between the Lakes hunting rules.
SPONSOR: Department of Fish and Wildlife Resources
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No.
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE:
PROVISION/MECHANICS:
FISCAL EXPLANATION:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

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

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

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

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

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

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

(4) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(5) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

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

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

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

(9) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

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

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

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

(13) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This defintion includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface runoff which is collected or channelled by man; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of CWA (33 U.S.C. 1258).

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

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

(a) 1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

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

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

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

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

[3. Which is not a new source.]

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

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

(a) After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

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

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

(32) "Permit" means an authorization, license, or equivalent control document issued by the cabinet or U.S. EPA to implement the requirements of the KPDES or

NPDES regulations. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

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

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

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

(b) Sewage from vessels; or

(c) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the state or federal agency administering the Underground Injection Control program pursuant to the Safe Drinking Water Act (42 U.S.C. 300f et seq.) or by the cabinet pursuant to 401 KAR Chapter 5 and the appropriate agency and if the state agency determines that the injection or disposal will not violate any applicable law or regulation.

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

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

(38) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

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

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

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

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

(43) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and regulations promulgated pursuant thereto.

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

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

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

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

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

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

(50) "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow; "grab sample" means a single effluent portion which is not a twenty-four (24) hour composite sample.

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

(52) "Variance" means any mechanism or provision under the KPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(53) "Waters of the Commonwealth" means as defined in KRS 224.005(26).

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

(55) "Well injection" means the subsurface implacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

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

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

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

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

Section 5. Abbreviations and Acronyms. The following abbreviations and acronyms, as used throughout the KPDES regulations, shall have the meaining given below:
(1) "BAT" means best available technology economically achievable;
(2) "BCT" means best conventional pollutant control technology;
(3) "BOD" means biochemical oxygen demand;
(4) "BPT" means best practicable technology currently available;
(5) "BMPs" means best management practices;
(6) "COD" means chemcial oxygen demand;
(7) "CFR" means code of federal regulation, as subsequently amended;
(8) "DMR" means discharge monitoring report;
(9) "KAR" means Kentucky Administrative Regulation;
(10) "KPDES" means Kentucky Pollutant Discharge Elimination System;
(11) "KRS" means Kentucky Revised Statutes;
(12) "NPDES" means National Pollutant Discharge Elimination System;
(13) "POTW" means publicly owned treatment works;
(14) "SIC" means standard industrial classification; and
(15) "TSS" means total suspended solids.

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

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 11, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 30, 1984, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing shall submit by November 26, 1984, a written request to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water—Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: This proposed amendment affects Section 1(29), the definition of a new discharger. The cutoff date is altered to coincide with the 40 CFR Section 122.2 effective date, August 13, 1979. That change is the result of the settlement agreement. Entities affected are those that meet the definition of new discharger and for which NPDES permit application has been made but which have not received a KPDES (NPDES) permit.
(a) Direct and indirect costs or savings to those affected:
1. First year: Those entities benefiting from the cutoff date change will have potentially less stringent permit requirements than otherwise. Those requirements may or may not result in costs or savings.
2. Continuing costs or savings: Same as (1)(a)1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(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: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. No other alternative is feasible.
(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: None

Tiering:
Was tiering applied? No. The proposed amendment modifies a definition regulation. The definition regulation's effect is through the programmatic sections of 401 KAR 5:050 to 5:085 (KPDES), which may or may not be tiered as appropriate.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Definitions and General Provisions: KPDES Permitting Program
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE:
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Proposed amendment modifies the Section 1 definition of new discharger.
PROVISION/MECHANICS: Section 1 definitions affect 401 KAR 5:050 to 5:085 (KPDES).
FISCAL EXPLANATION: No new impact on local governments since no local government is a new discharger.
PREPARER: Timothy Kuryla

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

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

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082,224.033(19), (21), (22), (23), 224.034, 224.060, 224.994(1), (4)
NECESSITY AND FUNCTION: KRS 224.033(21) provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by regulation, technological levels of treatment and effluent limitations. KRS 224.034(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the

Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d), KRS 224.034(1) requires that any exemptions granted in the issuance of such permits shall be pursuant to 33 U.S.C. Sections 1311, 1312 and 1326(a). Further, KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this regulation any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, and requirements for disposal into wells, into POTWS and by land application. *This amendment contains a technical correction to Section 1 of this regulation.*

Section 1. Applicability of the KPDES Requirements. The KPDES program requires permits for the discharge of pollutants from any point source into waters of the Commonwealth. Compliance with the KPDES program requirements constitutes compliance with the operational permit requirements of 401 KAR 5:005, Section 3(2) and requirements related to the operational permit. *Failure to obtain a KPDES permit does not relieve a discharger from complying with the applicable performance standards of the KPDES program, 401 KAR 5:050 to 5:085, inclusive.*

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

(a) Concentrated animal feeding operations;
(b) Concentrated aquatic animal production facilities;
(c) Discharges into aquaculture projects;
(d) Discharges from separate storm sewers; and
(e) Silviculture point sources.

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

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

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

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.

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

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

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the director may otherwise require under 401 KAR 5:065, Section 2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 USC 300f et seq.), and which are issued under a state or federal Underground Injection Control program; and, underground injections and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 5.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act (33 U.S.C. Section 1412).

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

(2) When the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.75;

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

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

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA;

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards.

Section 3. Variance Requests by Non-POTWs. A

discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this section:

(1) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period under Section 5 of 401 KAR 5:075. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.

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

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

(4) Thermal discharges. A variance under Section 7(4) of this regulation for the thermal component of any discharge must be filed with a timely application for a permit under 401 KAR 5:060, except that if thermal effluent limitations are established by EPA or are based on Kentucky water quality standards the request for a variance may be filed by the close of the public comment period under Section 5 of 401 KAR 5:075.

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

(1) In the notice the director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 401 KAR 5:080 applicable to the variance have been met. The director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

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

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

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

1. Designated planning areas under Sections 208 and 303 of CWA (33 U.S.C. 1288 and 1313);
2. City, county, or state political boundaries;
3. State highway systems;
4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;
5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or
6. Any other appropriate division or combination of boundaries.

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

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

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes;

c. Require the same effluent limitations or operating conditions;

d. Require the same or similar monitoring; and

e. In the opinion of the director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

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

(b) Requiring an individual permit.

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

a. The discharger(s) is a significant contributor of pollution as determined by the factors set forth in Section 8(3)(b) of 401 KAR 5:060;

b. The discharger is not in compliance with the conditions of the general KPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;

e. A Kentucky Water Quality Management Plan containing requirements applicable to such point sources is approved; or

f. The requirements of subsection (1) of this section are not met.

2. Any owner or operator authorized by a general permit may request to the excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

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

4. A permittee, excluded from a general permit solely because he already has an individual permit, may request that the individual permit be revoked. the permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants into Wells, into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = E \times N/T$$

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.

(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) Subsection (2) of this section does not alter a discharger's obligation to meet any more stringent requirements established under 401 KAR 5:065.

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

(1) Economic capability. The director, with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the director that the modified requirement will:

(a) Represent the maximum use of technology within the economic capability of the owner or operator; and

(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.

(2) Environmental considerations.

(a) The director, with the concurrence of EPA, may modify the BAT requirement set out in 401 KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in Section 5 of 401 KAR 5:080, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the director that:

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

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

3. The modification will not:

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

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

(b) If an owner or operator of a point source applies for a modification under this section for any pollutant, that owner or operator will be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.

(3) Innovative technology.

(a) The director may establish a date for complying with the deadline for achieving BAT set out in Section 1 of 401 KAR 5:080 no later than July 1, 1987, if the owner or operator establishes to the satisfaction of the director the following:

1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

3. That an innovative system will be installed which has the potential for significantly lower costs than the system which has been determined by the director to be economically achievable.

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

(c) The director may not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5:080, Section 5.

(4) Thermal pollution.

(a) The director may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the director that the original effluent limitation proposed by the director is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge will be made.

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

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

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

(3) Application procedure.

(a) Application deadline.

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

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

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

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

1. The name and address of the requester;

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

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

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

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

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

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

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

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

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

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

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

a. The POTW into which the industrial user discharges;

b. Adjoining states whose waters may be affected; and

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

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

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

(e) Review of requests by state.

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

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

Section 9. Pretreatment. (1) Applicability.

(a) This section applies to the following:

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

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

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

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

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

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

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

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

(d) "Interference" means an inhibition or disruption of the POTWs, its treatment processes or operations, or its

sludge processes, use or disposal which is a cause of or significantly contributes to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or to the prevention of sewage sludge use or disposal by the POTW in violation of any applicable regulation. An industrial use significantly contributes to a permit violation or prevention of sludge use or disposal whenever the user:

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

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

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

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

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

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

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

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

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

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

(h) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means except as prohibited by this section.

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

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

(4) National pretreatment standards: prohibited discharges.

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

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

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

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

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

(5) Pretreatment standards: categorical standards.

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

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

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

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

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

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

1. "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities, or it may be incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW. The demonstration of removal shall consist of data which reflect the removal achieved by the POTW for those

specific pollutants of concern included on the list developed pursuant to Section 307(a) of the CWA (33 U.S.C. Section 1317(a)). Each categorical pretreatment standard will specify whether or not a removal allowance may be granted for indicator or surrogate pollutants regulated in that standard.

2. "Consistent removal" means the average of the lowest fifty (50) percent of the removals measured according to paragraph (d)2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in that paragraph shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. When the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where:

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

r_c = removal corrected by the overflow factor.

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

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

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

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

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

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

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

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

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

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

3. The director may, however, elect not to review the application upon receipt, in which case the POTW's conditionally or provisionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures

of subsection (9) of this section, but in no event later than the time of any pretreatment program approval or any KPDES permit reissuance thereafter.

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

(d) Contents of application to revise discharge limits. Requests for authorization to revise discharge limits in categorical pretreatment standards shall be supported by the following information:

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

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

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

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

c. Sampling procedures: composite.

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

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

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

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

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

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

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

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

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

4. Calculation or revised discharge limits. The POTW shall submit proposed revised discharge limits for each of

the subcategories of industrial users calculated in the following manner:

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

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

where:

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

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

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

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

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

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

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

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

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

(e) Procedure for authorizing modification of standards.

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

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

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

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

(f) Continuation and withdrawal of authorization.

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

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

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

4. Modification or withdrawal of revised limits.

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

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

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

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

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

(7) POTW pretreatment programs: development by POTW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties, as authorized by law. A POTW may enter into contracts with industrial users to assure compliance by industrial users with pretreatment standards and

requirements. A contract may provide for liquidated damages for violation of pretreatment standards and requirements and may include an agreement by the industrial user to submit to the remedy of specific performance for breach of contract;

h. Pretreatment requirements enforced through the remedies set forth in subparagraph g of this paragraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or this section. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedure to halt or prevent any discharge to the POTW which presents or may present danger to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the director finds to be insufficient; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) Contents of POTW program submission.

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

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

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

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

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

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

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

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

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

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

3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

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

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

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

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

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

(g) Consistency with water quality management plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Director's decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in paragraph (a) of this subsection, the director will approve or deny the submission based upon the evaluation in paragraph (a) of this subsection and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. When the director makes a determination to deny the request, the director will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

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

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

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

(10) Reporting requirements for POTWs and industrial users.

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

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

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

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

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

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

5. Measurement of pollutants.

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

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

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

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

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

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

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

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

6. Certification. The user shall submit a statement,

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

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

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

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

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

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

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

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

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

(e) Periodic reports on continued compliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Recordkeeping requirements.

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

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

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of the analyses.

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

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

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

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

(13) Upset provision.

(a) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

(c) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the specific cause of the upset;

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

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

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

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

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

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

(e) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, cabinet enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review under KRS 224.081(2). Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

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

Section 10. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval. (9 Ky.R. 854; Am. 1103; 10 Ky.R. 9; eff. 6-1-83.)

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 11, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 30, 1984, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing shall submit by November 26, 1984, a written request to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water—Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: This proposed amendment modifies Section 1, applicability of KPDES. The change affirms the requirement of dischargers whether or not they have a KPDES permit to comply with KPDES performance standards. Entities affected are those subject to 401 KAR 5:050 to 4:085 (KPDES).

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no new costs or savings for those entities affected by the proposed amendment's changes to Section 1.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(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: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed change is a technical correction. As such, the change can only be implemented through amending the existing administrative regulation. No other alternative is feasible.

(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. The proposed amendment is a technical correction. Thus, tiering is inappropriate.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Scope and applicability of the KPDES program
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES Program
LEVEL(S) OF IMPACT: City; County; Urban County Government
BUDGET UNIT(S) IMPACT: Publically owned wastewater treatment plants
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: The proposed amendment is a technical correction to Section 1. The change affirms the requirements of dischargers whether or not they have KPDES permits.
PROVISION/MECHANICS: The change insures that discharger obligations are noted. Those obligations are incumbent upon those entities subject to 401 KAR 5:050 to 5:085 (KPDES).
FISCAL EXPLANATION: The change has no fiscal impact on local governments. The change affirms an existing obligation.
PREPARER: Timothy Kuryla

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.020, 224.033(19), (21), (22), (23), 224.034, 224.060
NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d) and that

any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers. *This amendment incorporates changes in the 40 CFR Sec. 122.22, 48 Fed. Reg. 39619 (September 1, 1983), that result from the U.S. Environmental Protection Agency November 16, 1981, settlement agreement for Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated cases, U.S. District Court of Appeals, District of Columbia Circuit. This amendment contains in addition a technical correction to Section 1.*

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

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the director as described in this regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6, continuation of expiring permits. For the purpose of this section, the director will accept the information required under subsection (4) of this section, for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

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

1. Persons covered by general permits under 401 KAR 5:055, Section 5;

2. Discharges excluded under 401 KAR 5:055, Section 1; and

3. Users of a privately owned treatment works unless the director requires otherwise under 401 KAR 5:065, Section 2(12).

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

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

(4) Duty to reapply.

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

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

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

2. The director, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

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

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

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by the KPDES regulations.

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

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

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

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

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

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

(e) A listing of all other relevant environmental permits, or construction approvals issued by the cabinet or other state or federal permits, as requested.

(f) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structure and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the facility property boundary.

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

(h) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the cabinet.

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

(8) Service of process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal nature for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action. Service, whether by *hand* [bond] or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

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

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

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

(a) For a corporation: by a *responsible corporate officer. For the purpose of this section, a responsible corporate officer means:*

1. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures [principal executive officer of at least the level of vice-president];

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. *For the purpose of this section, a principal executive officer of a federal agency includes:*

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, Regional Administrators of EPA)

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

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility;

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

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitted false information, including the possibility of fine and imprisonment for knowing violations."

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

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

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

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units shall be included in the application. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. The applicant shall provide a narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, for example, dye-making reactor, distillation tower. For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) Intermittent flows. If any of the discharges described in subsection 3 of this section are intermittent or seasonal, the applicant shall provide a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production. If an EPA effluent guideline applies to the applicant and is expressed in terms of pro-

duction or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline shall be included. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates shall be included.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided by the applicant. When quantitative data for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluents, the director may allow the applicant to test only one (1) outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative date for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples must be used. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

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

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

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

(b) Each applicant with processes in one (1) or more primary industry category, listed in Section 10 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

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

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

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

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

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

(d) Each applicant shall indicate any knowledge or to believe that any of the pollutants in Section 13(5) of this regulation, certain hazardous substances and asbestos is discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for any pollutant.

(e) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

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

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

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant:

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

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

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

(11) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

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

(13) Additional information. In addition to the in-

formation reported on the application form, applicants shall provide to the director, upon request, other information as the director may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

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

(2) Definitions.

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

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

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

(b) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of the KPDES regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

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

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

(a) The director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process wastewaters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the Commonwealth; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in Section 11 of this regulation will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

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

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

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

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

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

(a) The director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

4. Other relevant factors.

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

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

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

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

(2) Definitions.

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

(b) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee

or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

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

(2) Definition and criteria.

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

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

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

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

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

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

(3) Case-by-case designation of separate storm sewers. The director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

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

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

1. The location of the discharge with respect to waters of the Commonwealth;

2. The size of the discharge;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

4. Other relevant factors.

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

(2) Definitions.

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

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

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

Section 10. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES regulations whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants.
(2) Aluminum forming.
(3) Auto and other laundries.
(4) Battery manufacturing.
(5) Coal mining.
(6) Coil coating.
(7) Copper forming.
(8) Electorical and electronic components.
(9) Electroplating.
(10) Explosives manufacturing.
(11) Foundries.
(12) Gum and wood chemicals.
(13) Inorganic chemicals manufacturing.
(14) Iron and steel manufacturing.
(15) Leather tanning and finishing.
(16) Mechanical products manufacturing.
(17) Nonferrous metals manufacturing.
(18) Ore mining.
(19) Organic chemicals manufacturing.
(20) Paint and ink formulation.
(21) Pesticides.
(22) Petroleum refining.
(23) Pharmaceutical preparations.
(24) Photographic equipment and supplies.
(25) Plastics processing.
(26) Plastic and synthetic materials manufacturing.
(27) Porcelain enameling.
(28) Printing and publishing.
(29) Pulp and paper mills.
(30) Rubber processing.
(31) Soap and detergent manufacturing.

(32) Steam electric power plants.
(33) Textile mills.
(34) Timber products processing.

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

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

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

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

(a) 300 slaughter or feeder cattle;
(b) 200 mature dairy cattle, whether milker or dry cows;
(c) 750 swine each weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds;
(d) 150 horses;
(e) 3,000 sheep or lambs;
(f) 16,500 turkeys;
(g) 30,000 laying hens or broilers, if the facility has continuous overflow watering;
(h) 9,000 laying hens or broilers, if the facility has a liquid manure handling system;
(i) 1,500 ducks; or
(j) 300 animal units; and
(k) Either one (1) of the following conditions are met:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system or other similar manmade device; or

2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

(4) Definitions.

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

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

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

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

(a) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(b) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(c) Cold water aquatic animals include, but are not limited to the Salmonidoe family of the fish; e.g. trout and salmon.

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

(a) Closed ponds which discharge only during periods of excess runoff; or

(b) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(c) "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows.

Section 13. KPDES Permit Application Testing Requirements. (1) Table I—Testing Requirements for Organic Toxic Pollutants for Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction[1]			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	—
Alumimum forming	(*)	(*)	(*)	—
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)	—	(*)	—
Coal mining	(*)	(*)	(*)	(*)
Coil coating	(*)	(*)	(*)	—
Cooper forming	(*)	(*)	(*)	—
Electric and electronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	—
Explosives manufacturing	—	(*)	(*)	—
Foundries	(*)	(*)	(*)	—
Gum and wood chemicals	(*)	(*)	(*)	(*)
Inorganic chemicals manufacturing	(*)	(*)	(*)	—
Iron and steel manufacturing	(*)	(*)	(*)	—
Leather tanning and finishing	(*)	(*)	(*)	(*)
Mechanical products manufacturing	(*)	(*)	(*)	—
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining	(*)	(*)	(*)	(*)
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	(*)	(*)	(*)
Pharmaceutical preparations	(*)	(*)	(*)	—
Photographic equipment and supplies	(*)	(*)	(*)	(*)
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)

Plastic processing	(*)	—	—	—
Porcelain enameling	(*)	—	(*)	(*)
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paper mills	(*)	(*)	(*)	(*)
Rubber processing	(*)	(*)	(*)	—
Soap and detergent manufacturing	(*)	(*)	(*)	—
Steam electric power plants	(*)	(*)	(*)	—
Textile mills	(*)	(*)	(*)	(*)
Timber products processing	(*)	(*)	(*)	(*)

[1]The toxic pollutants in each fraction are listed in Table II.
*Testing required.

(2) Table II—Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) Volatiles

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene
17V 1,2-dichlorpropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

(b) Acid compounds

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2,4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

(c) Base/neutral

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroisopropyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthalene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenzo(a,h)anthracene
20B 1,2-dichlorobenzene
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenxene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) Pesticides.

1P aldrin
2P a-BHC
3P b-BHC
4P y-BHC
5P d-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P a-endosulfan
12P b-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

(3) Table III—Other Toxic Pollutants: Metals, Cyanide, and Total Phenols

(a) antimony, total
(b) arsenic, total
(c) beryllium, total
(d) cadmium, total
(e) chromium, total
(f) copper, total
(g) lead, total
(h) mercury, total
(i) nickel, total
(j) selenium, total
(k) silver, total
(l) thallium, total
(m) zinc, total
(n) cyanide, total
(o) phenols, total

(4) Table IV—Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present

(a) bromide
(b) chlorine, total residual
(c) color
(d) fecal coliform
(e) fluoride
(f) nitrate-nitrite
(g) nitrogen, total organic
(h) oil and grease
(i) phosphorus, total
(j) radioactivity
(k) sulfate
(l) sulfide
(m) sulfite
(n) surfactants
(o) aluminum, total
(p) barium, total
(q) boron, total
(r) cobalt, total
(s) iron, total
(t) magnesium, total
(u) molybdenum, total
(v) manganese, total
(w) tin, total
(x) titanium, total

(5) Table V—Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

(a) Toxic pollutants-asbestos
(b) Hazardous substance
1. acetaldehyde
2. allyl alcohol
3. allyl chloride

4. amyl acetate
5. aniline
6. benzonitrile
7. benzyl chloride
8. butyl acetate
9. butylamine
10. captan
11. carbaryl
12. carbofuran
13. carbon disulfide
14. chlorpyrifos
15. coumaphos
16. cresol
17. crotonaldehyde
18. cyclohexane
19. 2,4-D(2,4-dichlorophenoxy acetic acid)
20. diazinon
21. dicamba
22. dichlobenil
23. dichlone
24. 2,2-dichloropropionic acid
25. dichlorvos
26. diethyl amine
27. dimethyl amine
28. dintrobenzene
29. diquat
30. disulfoton
31. diuron
32. epichlorohydrin
33. ethanolamine
34. ethion
35. ethylene diamine
36. ethylene dibromide
37. formaldehyde
38. furfural
39. guthion
40. isoprene
41. isopropanolamine
42. kelthane
43. kepone
44. malathion
45. mercaptodimethur
46. methoxychlor
47. methyl mercaptan
48. methyl methacrylate
49. methyl parathion
50. mevinphos
51. mexacarbate
52. monethyl amine
53. monomethyl amine
54. naled
55. napthenic acid
56. nitrotoluene
57. parathion
58. phenolsulfanate
59. phosgene
60. propargite
61. propylene oxide
62. pyrethrins
63. quinoline
64. resorcinol
65. strontium
66. strychnine
67. styrene
68. 2,4,5-T(2,4,5-trichlorophenoxy acetic acid)
69. TDE(tetrachlorodiphenylethane)
70. 2,4,5-TP (2,-(2,4,5-trichlorophenoxy) propanoic acid)
71. trichlorofon
72. Triethylamine
73. trimethylamine
74. uranium
75. vanadium
76. vinyl acetate
77. xylene
78. xylenol
79. zirconium

Section 14. Application Requirements of Section 4(7)(b)1 of this Regulation Exempted for Certain Categories and Subcategories of Primary Industries. Categories of dischargers for which Section 4(7)(b)1 of this regulation is exempted for categories and subcategories of the primary industries listed in Section 10 of this regulation.

(1) Coal mines.

(2) Testing and reporting for all four (4) organic fractions in the Greige Mills Subcategory of the Textile Mills industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four (4) fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four (4) GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories of the Pulp Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Draft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

Section 15. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 11, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 30, 1984, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing shall submit by

November 26, 1984, a written request to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water—Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment affects Section 3, Signatories, (1) applications, and (4) certifications. The level of application signer for corporations and public agencies is reduced. The personally examined and familiar requirement is eliminated from the certification. Those changes are the result of the settlement agreement. The proposed amendment also makes a technical correction to Section 1(8) by changing "bond" to "hand." Entities affected are corporations and public agencies that are subject to 401 KAR 5:050 to 5:085 (KPDES).

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no new costs or savings for these entities affected by this proposed amendment.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(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: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical correction can only be implemented through amending the existing administrative regulation. No other alternative is feasible.

(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. The signatory part of the proposed amendment is tiered for it affects just corporations and public agencies. The certification part of the proposed amendment is not tiered because the certification provision applies to all applicants. The proposed amendment also makes a technical correction to which tiering is inappropriate.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: KPDES Application Requirements
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Required certification plus level of application signer
LEVEL(S) OF IMPACT: City; County, Urban County Government
BUDGET UNIT(S) IMPACT: Publicly owned wastewater treatment plant
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Proposed amendment modifies Section 3 to lessen the requirements for signatures and to eliminate the personally examined and familiar requirement from the certification. The Section 1 change is a technical correction.
PROVISION/MECHANICS: Section 3 changes are implemented through KPDES application forms. This is not applicable to the Section 1 technical correction.
FISCAL EXPLANATION: No impact on local governments.
PREPARER: Timothy Kuryla

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS [13.082,] 224.020, 224.033(11), (19), (21), (22), 224.034, 224.060, 224.994(1), (4)

NECESSITY AND FUNCTION: KRS 224.033(19) authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions omposed in 33 U.S.C. Sections 1342(b) and 1342(d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions. *This amendment incorporates changes in 40 CFR Sec. 122.41, 48 Fed. Reg. 39620 (September 1, 1983), that result from the U.S. Environmental Protection Agency November 16, 1981, settlement agreement for Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated cases, U.S. District Court of Appeals, District of Columbia Circuit. This amendment also updates the federal effluent limitations and standards, and the new source performance standards that are incorporated by reference from the Federal Register in Section 4. This amendment contains in addition technical corrections to Sections 2 and 3.*

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all KPDES permits, the director will establish conditions as required on a case-by-case basis under Section 2 of this regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference, for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES regulations is subject to penalties under KRS 224.994(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. [Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.]

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or *prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment* [correct any adverse impact on the environment resulting from noncompliance with this permit.]

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224 any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be subject to penalties under KRS 224.994(4).

(11) Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified as indicated in 401 KAR 5:060, Section 3. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.994(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alteration or additions to the permitted facility.

(b) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. This permit is not transferable to any per-

son except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the date submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date;

(f) Twenty-four (24) hour reporting. The permittee shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which must be reported within twenty-four (24) hours.

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e) and (f) of this subsection, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(13) Occurrence of a bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. A bypass is not subject to the provisions of paragraphs (c) and (d) of this subsection.

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of subsection (12), twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

(d) Prohibition of bypass.

1. Bypass is prohibited, and the director may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required under paragraph (c) of this subsection.

2. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three (3) conditions listed in subparagraph 1a, b and c of this paragraph.

(14) Occurrence of an upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, of other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in paragraph (f) of subsection (12); and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this regulation apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13) and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the director as soon as it knows or has reason to believe:

1. That any activity has occurred or may occur which could result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge may exceed the highest of the following "notification levels:"

a. One hundred micrograms per liter (100 mg/1);

b. Two hundred micrograms per liter (200 mg/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 mg/1) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/1) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7) or (10);

d. The level established by the director in accordance with subsection (6) of Section 2 of this regulation.

2. That is has begun or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4(9).

(b) POTWs. POTWs shall provide adequate notice to the director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject ot the KPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on: the quality and quantity of effluent introduced into the POTWs; and, any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this regulation each KPDES permit will include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N, are incorporated by reference as specified in Section 4 of this regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) will be included, as applicable. [Compliance with these effluent limitations and standards will constitute compliance with 401 KAR 5:035 and 401 KAR 5:045.]

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the director will institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause, for any discharger within a primary industry category, as listed in 401 KAR 5:060, Section 10, requirements under the KPDES regulations will be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit will include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit will be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit will include those standards or limitations.

(b) After June 30, 1981, any permit issued will include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the clause required by paragraph (a) of this subsection.

(c) The director will promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and regulations promulgated pursuant thereto;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 U.S.C. Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with Section 301(b)(1)(c) of CWA (33 U.S.C. Section 1311(b)(1)(c)).

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection will be includedin the permit, if applicable. Limitations will be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations will be included in the fact sheet under 401 KAR 5:075, Section 5.

(a) Limitations will control all toxic pollutants which:

1. The director determines, based on information reported in a permit application under 401 KAR 5:060, Section 4(7) or (10), or in a notification under Section 1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a,b, or c of this regulation, upon a petition from the permittee or on the director's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under Section 3(12)(f) of this regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit will incorporate, as applicable in addition to subsection (12) of Section 1 of this regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(9) of this regulation; pollutants in intake water for net limitations under Section 3(8) of this regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this regulation.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(9) Pretreatment program for POTWs. If applicable to the facility the permit will incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES regulations.

(b) Submit a local program when required by and in accordance with Section 9 of 401 KAR 5:055 to assure compliance with pretreatment standards to the extent applicable in the KPDES regulations. The local program will be incorporated into the permit as described in 401 KAR 5:055, Section 9. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under KRS Chapter 224 and the KPDES regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits. The permit will include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit will be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Section 6 of 401 KAR 5:070. *This requirement applies to those permits which were issued pursuant to Section 402(a)(1) of CWA (33 USC Section 1242 (a)(1)), unless one (1) of the following exceptions apply:* [The following may be exceptions from this provision:]

(a) If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;

(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);

(c) If the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Section 6 of 401 KAR 5:070;

(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production

and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants made by the director to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage sludge. Requirements will be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 401 KAR 47:050.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(16) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, will be included as applicable.

(17) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions will be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this regulation; with BMPs where limitations are infeasible; and under subsection (9) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous five (5) years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of KRS 224.034.

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:050, Section 1(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in intake water. Except as provided in subsection (8) of this section, effluent limitations imposed in permits will not be adjusted for pollutants in the intake water.

(8) Net limitations.

(a) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a net basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water

into which the discharge is made and if:

1.a. The applicable federally promulgated effluent limitations and standards specifically provide that they will be applied on a net basis; or

b. The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

2. The permit contains conditions requiring:

a. The permittee to conduct additional monitoring, for example, for flow and concentration of pollutants, as necessary to determine continued eligibility for and compliance with any such adjustments; and

b. The permittee to notify the director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under Section 6 of 401 KAR 5:070.

(b) Permit effluent limitations or standards adjusted under this paragraph will be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this subsection will be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards will not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor will effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(9) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(10) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

(11) Secondary treatment information. Permit conditions that involve secondary treatment will be written as provided in *401 KAR 5:045* [40 CFR Part 133, revised as of July 1, 1982, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.]

Section 4. Federal Effluent Limitations and Standards and New Source Performance Standards Incorporations. (1) 40 CFR Chapter I, Subchapter N, Parts 400-424 and Part 425-460, revised as of July 1, 1983 [2], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.

(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:

Industry	40 CFR Part	Federal Register	Date
Aluminum Forming	*467*	*48 FR 49126*	*10/24/83*
		corrected by	
		49 FR 11629	*03/27/84*
Battery Manufacturing	*461*	*49 FR 9108*	*03/09/84*
		corrected by	
		49 FR 13879	*04/09/84*
		corrected by	
		49 FR 27946	*07/09/84*
Coal mining	434	47 FR 45382	10-13-82
		corrected by	
		48 FR 50321	*11/01/83*
Coil coating (phase I)	465	47 FR 54232	12-1-82
		amended by	
		48 FR 31403	*07/08/83*
		amended by	
		48 FR 41409	*09/15/83*
(Phase II, Canmaking)	*465*	*48 FR 52380*	*11/17/83*
		amended by	
		48 FR 31403	*07/08/83*
		corrected by	
		49 FR 14104	*04/10/84*
Copper Forming	*468*	*48 FR 36942*	*08/15/83*
		amended by	
		48 FR 41409	*09/15/83*
Electrical/Electronic Components (Phase 1)	*469*	*48 FR 15382*	*04/08/83*
		amended by	
		49 FR 59201	*02/16/84*
(Phase II)	*469*	*48 FR 55690*	*12/14/83*
		corrected by	
		49 FR 1056	*01/09/84*
Electroplating (Pretreatment)	*413*	*44 FR 52590*	*09/07/79*
		amended by	
		48 FR 32462	*07/15/83*
		corrected by	
		48 FR 43680	*09/26/83*
		amended by	
		48 FR 41409	*09/15/83*
Inorganic Chemicals (Phase 1)	415	47 FR 28260	06/29/82
		amended by	
		47 FR 55226	*12/08/82*
Iron & Steel Manufacturing	*420*	*47 FR 23258*	*05/27/82*
		corrected by	
		47 FR 24554	*06/07/82*
		corrected by	
		47 FR 41738	*09/22/82*
		corrected by	
		48 FR 51773	*11/14/83*
		amended by	
		49 FR 21024	*05/17/84*
		corrected by	
		49 FR 24726	*06/05/84*
		corrected by	
		49 FR 25634	*06/22/84*
[Iron and steel manuf.	420	47 FR 41738	09-22-82]

Leather tanning and finishing	425	47 FR 52848	11-23-82
		amended by	
		48 FR 30115	*06/30/83*
		amended by	
		48 FR 31403	*07/08/83*
		corrected by	
		48 FR 32346	*07/15/83*
		corrected by	
		48 FR 35649	*08/05/83*
		amended by	
		48 FR 41409	*09/15/83*
Metal Finishing	*433*		
	413	*48 FR 32462*	*07/15/83*
		amended by	
		48 FR 41409	*09/15/83*
		corrected by	
		48 FR 43680	*09/26/83*
Ferrous Metals (Phase I)	*421*	*49 FR 8742*	*03/08/84*
		corrected by	
		49 FR 26739	*06/29/84*
		corrected by	
		49 FR 29792	*07/24/84*
Ore mining	440	47 FR 54598	12-3-82
Petroleum refining	419	47 FR 46434	10-18-82
Pharmaceuticals	*439*	*48 FR 49808*	*10/27/83*
		corrected by	
		48 FR 50322	*11/01/83*
Porcelain enameling	466	47 FR 53172	11-24-82
		amended by	
		48 FR 31403	*07/08/83*
		amended by	
		48 FR 41409	*09/15/83*
Pulp and paper	430		
	431	47 FR 52006	11-18-82
		corrected by	
		48 FR 13176	*03/30/83*
		amended by	
		48 FR 31403	*07/08/83*
Steam-electric	423	47 FR 52290	11-19-82
		amended by	
		48 FR 31403	*07/08/83*
Textile mills	410	47 FR 38810	09-2-82
		corrected by	
		48 FR 39624	*09/01/83*
Timber	*420*	*46 FR 8260*	*01/26/81*
		amended by	
		46 FR 57287	*11/23/81*

Section 5. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 11, 1984 at 3 p.m.
PUBLIC HEARING SCHEDLED: A public hearing on this proposed regulation will be held on November 30, 1984, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing shall submit by November 26, 1984, a written request to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: The proposed amendment affects Section 1(3), need to halt not a defense, and (4), duty to mitigate; Section 2(1), technology-based limitations and standards, and (11), reissued permits; Section 3, secondary treatment information; plus Section 4, federal limitations and standards. Section 1(3) is modified to eliminate the mandatory obligation to cease or reduce operations or discharges in order to maintain permit compliance. Section 1(4) is modified to require all reasonable steps to be taken to prevent adverse impacts to human health and to the environment. Both changes are the result of the settlement agreement. Section 2(1) is changed to delete the last line. Section 2(11) is changed to clarify the subsection's applicability. Section 3(11) is changed to substitute a KPDES citation. These three changes are technical corrections. Section 4(2) is modified to update the listed effluent limitations and standards. Entities affected by Section 1, 2, and 3 changes are those subject to 401 KAR 5:050 to 5:085 (KPDES). Entities affected by Section 4 changes are those engaged in the listed activities.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no new costs or savings for those entities affected by this proposed amendment's changes to Sections 1, 2, and 3. There are no new costs or savings for those entities affected by the proposed amendment's changes to Section 4. The affected entities must meet under NPDES those effluent limitations and standards. The proposed amendment simply incorporates in KPDES those changes.
2. Continuing costs or savings: Same as (1)(a)1. for Sections 1, 2, and 3 changes. Same as (1)(a)1. for Section 4 changes.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. for Sections 1, 2, and 3 changes. Same as (1)(a)1. for Section 4 changes.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(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: No effect on state and local revenues
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections can only be implemented through amending the existing administrative regulation. No other alternative is feasible.
(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 response by agency.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: KPDES Permit Conditions
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Mitigation requirement plus non-allowable defense in enforcement actions.

LEVEL(S) OF IMPACT: City, County, Urban County government
BUDGET UNIT(S) IMPACT: Publically owned wastewater treatment plants
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Proposed amendment's changes to Section 1 modify defense and mitigation provisions. Proposed amendment's changes to Sections 2 and 3 are technical corrections. Proposed amendment's changes to Section 4 update the listed effluent limitations and standards.
PROVISION/MECHANICS: Sections 1 and 4 changes are implemented by KPDES Permit Holders. This is not applicable to Sections 2 and 3 changes.
FISCAL EXPLANATION: Section 1 changes result in no impact on local governments. Section 4 changes do not effect local governments. This is not applicable to Sections 2 and 3 changes.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:070. Provisions of the KPDES permit.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS [13.082,] 224.020, 224.033(19), (21), (22), (23), 224.034(1), (4), 224.060
NECESSITY AND FUNCTION: KRS 224.034(1) provides that the Natural Resources and Environmental Protection Cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and 1342(d). KRS 224.034(1) requires that any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 U.S.C. Sections 1311, 1312 and 1326(a). Further KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification, revocation and reissuance. *This amendment incorporates changes in 40 CFR Sec. 122.62, 48 Fed. Reg. 39620 (September 1, 1983), that result from the U.S. Environmental Protection Agency November 16, 1981 settlement agreement for Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated changes, U.S. District Court of Appeals, District of Columbia Circuit.*

Section 1. Duration of Permits. (1) KPDES permits will be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(4)(b), the term of a permit will not be extended by modification beyond this maximum duration. The director may issue a permit for a duration that is less than the full five (5) year term.

(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2)2c, d and e, whether or not applicable federal effluent limitations guidelines have been promulgated or approved.

Section 2. Schedules of Compliance. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible. In addition, schedules of compliance will require compliance not later than the applicable statutory deadline as specified in 401 KAR 5:080.

(b) The first KPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger will not contain a schedule of compliance under this section.

(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit will be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activites at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule will lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance no later than the deadline, specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules will include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

Section 3. Requirements for Recording and Reporting of Monitoring Results. All permits will specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall be no less frequent than specified in Section 2 of this regulation.

Section 4. Effect of a Permit. (1) Except for any toxic effluent standards and prohibitions included in 401 KAR 5:065, Section 1(1)(b), compliance with a KPDES permit during its term constitutes compliance, for purposes of enforcement, with the KPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections 6 and 7 of this regulation.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

Section 5. Transfer of Permits. (1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Section 6 of this regulation, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the KPDES regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the director at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this regulation. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.

(3) If a new KPDES permit is prepared as a result of either subsection (1) or (2) of this section, then the new permittee shall be subject to the "duplicate permit fee" as specified in 401 KAR 5:085, Section 5.

Section 6. Modification or Revocation and Reissuance of Permit. When the director receives any information, the director may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 401 KAR 5:075 must be followed.

(1) Causes for modification. The following are causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. If the director has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised regulations, guidance or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued then cause may exist for modification. However, the permit may be modified only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on EPA effluent limitation guidelines or water quality standards;

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with Section 2 of 401 KAR 5:075, within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Section 2 of 401 KAR 5:075 within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the director determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a KPDES compliance schedule be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) In addition the director may modify a permit:

1. When the permittee has filed a request for a variance under 401 KAR 5:055, Section 7, or for "fundamentally different factors" within the time specified in 401 KAR 5:080, Section 3, and the director processes the request under the applicable provisions.

2. When required to incorporate as applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under Section 2(3) of 401 KAR 5:065, for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 CFR 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under Section 3(8) of 401 KAR 5:065.

5. When a discharger is no longer eligible for net limitations, as provided in Section 3(8)(a)2b of 401 KAR 5:065.

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4.

9. To establish a "notification level" as provided in Section 2(6) of 401 KAR 5:065.

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, in the case of the POTW which has received a grant under CWA 202(a)(3) (33 U.S.C. Section 1282(a)(3)) for 100 percent of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2) (33 U.S.C. Section 1282(a)(2)). In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the director to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. When the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following regulation: 401 KAR 5:065, Section 1(3) and (4).

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively revoke or reissue a permit:

(a) Cause exists for termination under Section 7 of this regulation and the director determines that modification or revocation and reissuance is appropriate.

(b) The director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section will be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements; or

(d) Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director.

(e) Change the construction schedule for a discharger which is a new source.

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Section 7. Termination of Permit. (1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(d) KPDES permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(2) The director will follow the applicable procedures of 401 KAR 5:075 in terminating a KPDES permit under this section.

Section 8. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 11, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 30, 1984, at 10 a.m. in the Capital Plaza Tower. A person in-

terested in attending this hearing shall submit by November 26, 1984, a written request to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water—Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment affects Section 6(1), causes for permit modification. An additional modification provision is added. The provision allows NPDES permits made final after August 1, 1981, to be modified to conform to changes resulting from the settlement agreement. Entities affected are those with NPDES permits made final after August 1, 1981.

(a) Direct and indirect costs or savings to those affected:

1. First year: Those entities benefiting from the additional modification provision may have potentially less stringent permit requirements than otherwise. Those requirements may or may not result in costs or savings.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(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: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. No other alternative is feasible.

(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. The proposed amendment provides another cause for permit modification. In that sense, tiering is applied. However, the causes for modification apply to all KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Provisions of the KPDES Permit
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE:
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Proposed amendment modifies Section 6 to provide entities granted KPDES permits after August 1, 1981 a means of re-opening the permit to allow changes resulting from the EPA settlement agreement.
PROVISION/MECHANICS: Section 6 changes are implemented by NPDES Permit Holders.
FISCAL EXPLANATION: No new impact on local governments since no local government was granted, after August 1, 1981, and before October 1, 1983, a final NPDES Permit.
PREPARER: Timothy Kuryla

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:015. Documents incorporated by reference.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS [13.082,] 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 documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

2. Appendix B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method).

3. Appendix C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry).

4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.

6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1—Sample and Velocity Traverses for Stationary Sources.

b. Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).

c. Method 2A—Direct Measurement of Gas Volume through Pipes and Small Ducts.

d. Method 2B—Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.

e. Method 3—Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight.

f. Method 4—Determination of Moisture *Content* in Stack Gases.

g. Method 5—Determination of Particulate Emissions from Stationary Sources.

h. Method 5A—Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry.

i. Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.

j. Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources,

k. Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources.

l. Method 7—Determination of Nitrogen Oxide Emissions from Stationary Sources.

m. Method 7A—Determination of Nitrogen Oxides Emissions from Stationary Sources.

n. [m.] Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.

o. [n.] Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources.

p. [o.] Method 10—Determination of Carbon Monoxide Emissions from Stationary Sources.

q. [p.] Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.

r. [q.] Method 12—Determination of Inorganic Lead Emissions from Stationary Sources.

s. [r.] Method 13A—Determination of Total Fluoride Emissions from Stationary Sources—SPADNS Zirconium Lake Method.

t. [s.] Method 13B—Determination of Total Fluoride Emissions from Stationary Sources—Specific Ion Electrode Method.

u. [t.] Method 14—Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.

v. [u.] Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.

w. [v.] Method 16—Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

x. [w.] Method 17—Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).

y. Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.

z. [x.] Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

aa. [y.] Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

bb. [z.] Method 21—Determination of Volatile Organic Compounds Leaks.

cc. [aa.] Method 22—Visual Determination of Fugitive Emissions from Material Processing Sources.

dd. [bb.] Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

ee. [cc.] Method 24A—Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings.

ff. [dd.] Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

gg. [ee.] Method 25A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

hh. [ff.] Method 25B—Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.

ii. [gg.] Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test.

2. Appendix B: Performance Specifications:

a. Performance Specification 1—Specifications and test procedures for opacity continuous emission monitoring systems in stationary sources.

b. Performance Specification 2—Specifications and test procedures for sulfur dioxide and nitric oxides continuous emission monitoring systems in stationary sources.

c. Performance Specification 3—Specifications and test procedures for oxygen and carbon dioxide continuous emission monitoring systems in stationary sources.

d. Performance Specification 5—Specifications and test procedures for TRS continuous emission monitoring systems in stationary sources.

(d) 40 CFR 61.

1. Appendix B: Test Methods:

a. Method 101—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (air streams).

b. Method 101A—Determination of particulate and gaseous mercury emissions from sewage sludge incinerators.

c. Method 102—Determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams).

d. Method 103—Beryllium screening method.

e. Method 104—Reference method for determination of beryllium emissions from stationary sources.

f. Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.

g. Method 106—Determination of vinyl chloride from stationary sources.

h. Method 107—Determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

i. Method 107A—Determination of vinyl chloride content of solvents, resin-solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.

2. Appendix C: Quality Assurance Procedures:

a. Procedure 1—Determination of adequate chromatographic peak resolution.

b. Procedure 2—Procedures for field auditing GC analysis.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:

(1) Method 9—Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.

(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate annual "Book of ASTM Standards" from the American Society for Testing and Materials are incorporated herein by reference:

(1) ASTM Standards:

(a) A 99-66(71) Standard Specification for Ferromanganese.

(b) A 100-69(74) Standard Specification for Ferrosilicon.

(c) A 101-73 Standard Specification for Ferrochromium.

(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.

(e) A 483-64(74) Standard Specification for Silicomanganese.

(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.

(g) D 86-82 Standard Method for distillation of Petroleum Products.

(h) [(g)] D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(i) [(h)] D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(j) [(i)] D 388-66(72) Standard Specification for Classification of Coals by Rank.

(k) D 737-75 Standard Test Method for Air Permeability of Textile Fabrics.

(l) [(j)] D 1072-56(75) Standard Test Method for Total Sulfur in Fuel Gases.

(m) [(k)] D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(n) [(l)] D 1475-60*(80)* [(74)] Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(o) [(m)] D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(p) [(n)] D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(q) [(o)] D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(r) [(p)] D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(s) [(q)] D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(t) D 2267-83 Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography.

(u) [(r)] D 2369-73 Standard Test Method for Volatile Content of Paints.

(v) D 2382-83 Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method).

(w) D 2504-83 Standard Test Method for Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography.

(x) [(s)] D 2880-78 Standard Specification for Gas Turbine Fuel Oils.

(y) D 2879-83 Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperatures of Liquids by Isoteniscope.

(z) [(t)] D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(aa) [(u)] D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(bb) [(v)] E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(cc) E 168-67(77) Standard Recommended Practices for General Techniques of Infrared Quantitative Analysis.

(dd) E 169-63(81) Standard Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis.

(ee) E 260-73 Standard Recommended Practice for General Gas Chromatography Procedures.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68—Analysis of Soda and Sulfate—White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1) (a) Guideline on Air Quality Models, EPA-450/2-78-027, OAQPS No. 1.2-080, April, 1978.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Control Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(e) Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.

(f) Guidelines for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, EPA 450/4-81-003, PB 82-145327, July, 1981.

(g) Guidelines for Fluid Modeling of Atmospheric Diffusion, EPA-600/8-81-009, PB 81-201410, April, 1981.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

(1) (a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(2) Copies may be obtained from: Division of Air Pollution [Control], Technical Services, Department for [Natural Resources and] Environmental Protection, *Fort Boone Plaza, 18 Reilly Road,* [5th Floor, Capital Plaza Tower,] Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73—Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and Water Pollution Control Federation is incorporated herein by reference:

(1) Method 209B from Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980.

(2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 12, 1984

FILED WITH LRC: October 15, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment is scheduled for November 27, 1984, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation incorporates by reference the methods required for demonstrating compliance in the regulations for the Division of Air Pollution. This regulation is being amended to add methods as required in the regulations which are being proposed by the Division. Simply incorporating these methods does not affect any sources or other entities. Any impact would occur in the individual regulation where the methods are required.

(a) Direct and indirect costs or savings to those affected: None

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: None. Any requirements appear in the individual regulations.

(2) Effects on the promulgating administrative body: None

(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: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since this regulation is merely incorporating the methods required in other regulations.

(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 regulation is being amended to add reference methods and ASTM methods that are required in those regulations on New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) which the Division is adopting by reference. In a few instances, the federal regulation requires a method that has not been promulgated or suggests a method for an example. In those cases, those specific methods have not been incorporated by reference.

Tiering:

Was tiering applied? No. Tiering was not applied because this regulation adopts by reference those methods for determining compliance which are required by other regulations. Tiering is not applicable in this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department or Environmental Protection
Division of Air Pollution

401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 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 control of volatile organic compound emissions from new graphic arts facilities which use rotogravure and flexography.

Section 1. Applicability. *(1)* The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:

(a) [(1)] In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(b) [(2)] In any other county and is a part of a major source of volatile organic compounds.

(c) [(3)] The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties non-attainment for ozone under 401 KAR 51:010.

(2) The provisions of this regulation shall not apply to new facilities which use publication rotogravure printing process. Those facilities shall be subject to the provisions of 401 KAR 59:213.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, [publication rotogravure,] specialty rotogravure, and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment and/or operations used to apply, dry, or cure any inks containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) printing line, its volatile organic compound emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of volatile organic compounds it receives from or distributes to each printing line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units will be considered as performing a printing operation.

(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(6) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(7) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to [publication,] specialty and packaging printing.

(8) "Coating" means the application of a uniform layer of material across the entire width of a web.

(9) "Classification date" means February 4, 1981.

(10) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compounds net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(11) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(12) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(14) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(15) "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(16) "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned giftwrap, wallpaper and floor coverings.

Section 3. Standard for Volatile Organic Compounds. [(1) No person shall cause, allow, or permit an affected facility for publication rotogravure printing to discharge into the atmosphere more than twenty-five (25) percent by weight of the volatile organic compounds net input into the affected facility.]

(1) [(2)] No person shall cause, allow, or permit an affected facility for packaging rotogravure printing or specialty rotogravure printing to discharge into the atmosphere more than thirty-five (35) percent by weight of the volatile organic compounds net input into the affected facility.

(2) [(3)] No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for inks shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

(a) ASTM D 1644-75 Method A;
(b) ASTM D 1475-60(74);
(c) ASTM D 2369-73; or
(d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the printing systems:

(1) Utilize a water-borne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower volatile organic compound content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); or

(3) Utilize inks which, excluding water, contain sixty (60) percent or more by volume non-volatile material as applied to the substrate.

Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the department on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation presently applies to rotogravure, publication rotogravure, specialty rotogravure and flexographic printing operations. It is being amended to delete publication rotogravure printing operations from the provisions of this regulation. Those sources will no longer be regulated by this regulation, but will now be regulated by the new regulation 401 KAR 59:213. The new regulation adopts by reference the federal regulation on publication rotogravure printing operations.

(a) Direct and indirect costs or savings to those affected: Initial review indicates that there would be savings since the publication rotogravure printing operations will no longer be subject to this regulation. However, those sources will now be subject to 401 KAR 59:213, so there are no additional costs or savings.

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: The Division will no longer issue construction or operating permits to those facilities which are being deleted from the provisions of the regulation, but will issue permits to sources subject to 401 KAR 59:213, so that there is no real change in cost or savings or the reporting and paperwork requirements.

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: The Division will no longer issue permits and inspection reports to those sources being deleted from this regulation, but will issue permits and inspection reports to sources subject to 401 KAR 59:213.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered; this regulation is being amended to prevent overlapping of regulations created by promulgating 401 KAR 59:213.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. This regulation is being amended to prevent overlapping of regulation. 401 KAR 59:213 will apply to new publication rotogravure printing operations. 401 KAR 59:212 is being amended to delete those facilities from the provisions of the regulation.

(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? Yes. All publication rotogravure printing operations are being deleted from the provisions of this regulation. Those operations will now be subject to the provisions of 401 KAR 59:213.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:010E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on May 14, 1984 and hereinafter should be referred to as Corrections Policies and Procedures or institutional policies and procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

(1) The corrections policies and procedures:

1.1	Legal Assistance for Corrections Staff
1.2	News Media
1.6	Extraordinary Occurrence Reports *(Amended as of 7/9/84)*
2.1	Inmate Canteen
3.1	Code of Ethics
[3.2	Inclement Weather and Emergency Conditions Policy]
3.3	Holding of Second Jobs by Bureau Employees
3.10	Staff Clothing and Personal Appearance
3.12	Institutional Staff Housing
3.14	Corrections Cabinet Payroll Deduction Policy and Procedure
4.1	Attendance at Professional Meetings
4.2	Staff Training and Development *(Amended as of 9/28/84)*
4.3	Firearms and Chemical Agents Training *(Amended as of 8/10/84)*
4.4	Educational Assistance Program
6.1	Open Records Law
8.4	Emergency Preparedness
9.1	Use of Force
9.3	Transportation of Convicted Offenders
9.4	Transportation of Inmates to Funerals or for Reasons of Illness to Immediate Family
9.5	Return of Escapees by Automobile
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.15	Institutional Entry and Exit Policy and Procedures
9.18	*Informants (added 9/15/84) (Amended as of 10/5/84)*
10.1	Inmates Serving a Sentence of Death
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates *(Amended as of 6/1/84)*
11.3	Special Diet Procedures
12.1	Resident Clothing
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program *(Amended as of 7/9/84)*
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties *(Amended as of 8/22/84)*
15.3	Meritorious Good Time
15.4	Governor's Meritorious Good Time Award
15.5	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
16.1	General Inmate Visiting Procedure
16.2	Inmate Correspondence *(Amended as of 9/1/84)*
16.3	Telephone Calls
17.1	Inmate Personal Property *(Amended as of 7/15/84)*
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates *(Amended as of 6/26/84)*
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines *(Amended as of 8/15/84 and 9/1/84)*
18.6	Classification Document
18.7	Transfers
18.8	Guidelines for Transfers Between Institutions *(Amended as of 9/1/84)*
18.9	Out-of-State Transfers
18.10	Pre-Parole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
19.1	Government Services Projects
19.2	Community Services Projects
20.1	Study Release
20.6	Vocational Study Release
22.1	Privilege Trips
25.1	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Pre-Release
25.4	Inmate Furloughs *(Amended as of 9/1/84)*
25.6	Community Center Program
25.7	Expedient/Expanded Expedient Release
25.8	Extended Furloughs
27.1	Supervision: Case Classification *(Amended as of 10/1/84)*
27.2	Risk/Needs Administration *(Amended as of 10/1/84)*
27.4	Supervision Plan: General
27.7	Classification of Caseloads
27.8	Travel Restrictions
27.9	Conditions of Supervision
27.10	Preliminary Revocation Procedures
27.11	Apprehension and Transportation of Violators of Probation, Parole and Conditional Release
27.12	Fugitive Section/Probation and Parole
27.13	Supervision Fee

28.2	Investigations: General
28.3	Pre-Sentence Investigations (To the Court)
28.4	Pre-Parole (Pre-Sentence) Investigation (To the Institution and State Parole Board)
28.5	Special Report to the Parole Board
28.7	Out-of-State Investigations

(2) The Kentucky State Reformatory Procedures Memorandum:

KSR 01-005	Public Information and News Media Relations
KSR 02-002	Special Management Inmates—Operations, Rules and Regulations for Unit D *(Amended as of 7/6/84 and 10/3/84)*
KSR 02-003	Inmate Summer Dress Regulations
KSR 02-004	Special Management Inmates—Unit D Classification
KSR 02-006	Operational Procedures and Rules and Regulations for Unit A, B, C *(Amended as of 8/1/84 and 8/21/84)*
KSR 02-007	Sanitation and General Living Conditions *(Amended as of 8/28/84)*
KSR 02-008	Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 02-009	Housing Unit Assignment *(Amended as of 8/28/84)*
KSR 02-011	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 02-012	Inmate Rights *(Amended as of 8/21/84)*
KSR 02-014	Assessment/Classification Center Operations Rules and Regulations *(Amended as of 8/21/84)*
KSR 02-016	Dormitory 10 Operations
KSR 02-017	Special Needs Unit
KRS 02-018	*Unit D Admission/Release Ticket (Added 7/6/84)*
KSR 03-004	Horizontal Gates/Box 1 Enter and Exit Procedure
KSR 03-005	Gate I Entrance and Exit Procedure *(Amended as of 6/1/84)*
KSR 03-012	Shift Assignment/Reassignment
KSR 03-016	Use of Force
KSR 03-022	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 04-009	Inmate Family Emergency—Life Threatening Illness or Death in Inmate's Immediate Family
KSR 04-010	Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery, or Death of an Inmate
KSR 04-011	Emergency Preparedness Training
KSR 05-001	Governor's Meritorious Good Time Award
KSR 05-002	Restoration of Forfeited Good Time
KSR 05-003	Differential Status for SU (QUIT) Inmates
KSR 05-004	Returns from Other Institutions
KSR 05-005	Discharge of Residents to Hospital or Nursing Home
KSR 05-006	Inmate I.D. Cards
KSR 05-007	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 05-008	Identification of Mentally Retarded Inmates
KSR 05-009	Identification Department Admissions and Discharges
KSR 05-010	Inmate Work Incentives
KSR 05-011	Pre-Parole Progress Report
KSR 05-012	Inmate Rules and Discipline *(Amended as of 8/21/84)*
KSR 05-013	On-the-Job Training *(Amended as of 8/28/84)*
KSR 06-001	Visiting Regulations *Amended as of 7/20/84)*
KSR 06-003	Legal Aide Office and Law Library Services *(Amended as of 8/21/84)*
KSR 06-004	Inmate Library Services *(Amended as of 7/6/84)*
KSR 06-005	State Items Issued to Inmates
KSR 06-007	Inmate Personal Property *(Amended as of 7/6/84)*
KSR 06-008	Inmate Correspondence and Mailroom Operations *(Amended as of 7/30/84)*
KSR 06-009	Library Services for Unit D
KSR 06-010	Inmate Canteen *(Amended as of 8/3/84)*
KSR 06-012	Meal Planning for General Population
KSR 06-013	Special Diets
KSR 06-014	Food Service Inspections
KSR 06-015	Inmate Access to Telephones
KSR 06-017	Entry/Exit to Visitation Building
KSR 06-018	Dining Room Dress Code for Inmates
[KSR 06-019	Legal Aide Office and Inmate Law Library Supervision]
KSR 06-021	A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 08-003	Vocational School Referral and Release Process
KSR 08-006	Academic School Programs
KSR 08-007	Kentucky Inter-Prison Press
KSR 08-008	Research Activities
KSR 08-009	Inmate Organizations *(Amended as of 10/3/84)*
KSR 08-010	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 08-011	Religious Programming
KSR 08-012	Criteria for Participation in Jefferson Community College Program
KSR 09-001	Extraordinary Occurrence Report
KSR 09-002	Inmate Master File
KSR 09-003	Cooperation and Coordination with Oldham County Court
KSR 09-004	Records Audit
KSR 09-005	Security of Inmate Records
KSR 09-006	Management Information Systems *(Amended as of 10/3/84)*
KSR 10-001	Employee Dress and Personal Appearance
KSR 10-004	Intra-Agency Promotional Opportunity Announcements
KSR 10-005	Employee Time and Attendance
KSR 10-006	Travel Expense Reimbursement
KSR 10-007	Employee Tuition Reimbursement
KSR 10-009	Workers' Compensation
KSR 10-010	Equal Employment Opportunity Complaints
KSR 10-011	Employee Greivance Procedure
KSR 10-014	Prohibited Employee Conduct, Disciplinary Actions, and Appeals Process

KSR 10-015	Affirmative Action Program
KSR 10-016	Confidentiality of Personnel Records
KSR 10-020	Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein
KSR 10-021	Personnel Selection, Retention and Promotion
KSR 10-022	Institutional Tower Room Regulations
KSR 10-023	Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions
KSR 10-025	Work Planning and Performance Review (WPPR)
KSR 10-026	Inclement Weather and Employee Work Attendance
KSR 11-001	Screening of Checks and Money Transfers from Inmate Personal Accounts
KSR 11-011	Inmate Personal Accounts
KSR 11-012	Institutional Funds and Issuance of Checks *(Amended as of 10/3/84)*
KSR 12-001	Crime Scene Camera
KSR 12-002	Inmate Grievance Procedure
KSR 12-003	Collection, Preservation, and Identification of Physical Evidence *(Amended as of 7/30/84)*
KSR 12-005	Drug Abuse Testing *(Amended as of 7/30/84)*
KSR 13-002	Guidelines for Contractors
KSR 14-001	Regulations for Hospital Patients
KSR 14-002	Medication for Inmates Leaving Institution Grounds
KSR 14-003	Dental Care for Inmates *(Amended as of 8/21/84)*
KSR 14-004	Medical and Dental Sick Call *(Amended as of 8/28/84)*
KSR 14-005	Services for Mentally Retarded Inmates
KSR 14-006	Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 14-007	Transfer of Residents to Kentucky Correctional Psychiatric Center
KSR 14-008	Institutional Laboratory Procedures
KSR 14-009	Institutional Pharmacy Procedures
KSR 14-010	Requirements for Medical Personnel *(Amended as of 8/28/84)*
KSR 14-011	Preliminary Health Evaluation and Establishment of Inmate Medical Record *(Amended as of 8/28/84)*
KSR 14-012	Health Standards/Regulations for Food Service Employees
KSR 14-013	Vision Care/Optometry Services

(3) The Kentucky State Penitentiary Operations Memorandum:

KSP 000000-06	*Administrative Regulations (Added 7/3/84)*
KSP 010000-02	*Communication—Information Flow (Amended as of 5/15/84)*
KSP 010000-04	Public Information and Media Communication *(Amended as of 6/19/84)*
KSP 020000-01	General Guidelines for KSP Employees
KSP 020000-02	Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave *(Amended as of 7/17/84 and 8/10/84)*
KSP 020000-03	Work Planning and Performance Review *(Amended as of 6/26/84 and 9/19/84)*
KSP 020000-04	Employee Disciplinary Procedures
KSP 020000-05	Proper Dress for Uniformed and Non-Uniformed Personnel *(Amended as of 5/15/84)*
KSP 020000-06	Employee Grievance Procedure
KSP 020000-07	Personnel Registers and Advertisements
KSP 020000-09	Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files
KSP 020000-10	Overtime Policy
KSP 020000-15	Legal Assistance
KSP 020000-20	Equal Employment Opportunity Complaints
KSP 020000-23	Recruitment and Employment of Ex-Offenders
KSP 020000-24	Educational Assistance Program
KSP 020000-25	Mediation and Appeal Procedure for WPPR
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 030000-05	Inmate Personal Funds *(Amended as of 6/5/84, 7/30/84 and 7/19/84)*
KSP 030000-06	Inmate Commissary Program
KSP 040000-02	Inmate Records Section
KSP 040000-08	Inmate Equal Opportunity Policy
KSP 050000-14	Searches of Inmates, Visitors, Staff, Vehicles, Cells and Area Shakedown and Preservation of Evidence
KSP 060000-01	Telephones *(Amended as of 6/29/84)*
KSP 060000-02	General Operational Procedures for Special Management Unit *(Amended as of 5/15/84 and 5/22/84)*
KSP 060000-03	Operational Procedures for Special Management Inmates Assigned to Disciplinary Segregation, Administrative Segregation, Administrative Control Unit and Special Security Unit *(Amended as of 5/22/84 and 7/17/84)*
KSP 060000-04	Operational Procedures for Special Management Inmates Assigned to Protective Custody *(Amended as of 5/15/84, 5/22/84, 8/7/84 and 9/18/84)*
KSP 060000-09	Protective Custody Unit—Attorney Telephone Calls
KSP 060000-11	Criteria for Disciplinary Segregation and Incentive Time Reduction Program *(Amended as of 5/22/84)*
KSP 060000-12	Administrative Control Protective Custody *(Amended as of 5/22/84)*
KSP 060000-13	*Special Management—Outdoor Exercise (Added 7/3/84)*
KSP 070000-02	Sick Call *(Amended as of 6/26/84)*
KSP 070000-03	Health Evaluations *(Amended as of 6/12/84 and 9/12/84)*
KSP 070000-04	Consultations *(Amended as of 6/19/84)*
KSP 070000-11	Medical and Dental Services for Western Kentucky Farm Center
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning

KSP 070000-24	General Sanitation and Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs *(Amended as of 7/17/84 and 9/12/84)*
KSP 090000-06	Utilization of Legal Postage and Copy Privileges by Indigents
KSP 090000-07	Access to the Inmate Legal Aide Office
KSP 090000-08	Inmate Legal Aide Office
KSP 090000-12	WKFC Residents—Access to Kentucky State Penitentiary Legal Library
KSP 100000-02	Visiting Program *(Amended as of 6/5/84, 6/26/84, 8/1/84 and 9/14/84)*
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Mail *(Amended as of 6/12/84 and 8/3/84)*
KSP 100000-07	Long Distance Telephone Service
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures *(Amended as of 7/3/84, 8/27/84 and 9/28/84)*
KSP 100000-10	Mail, Search and Seizure
KSP 100000-11	Authorized and Unauthorized Property for Inmates *(Amended as of 9/12/84)*
KSP 100000-12	Packages
KSP 100000-14	Property Room and Inventory Procedures
KSP 100000-15	Uniform Standards for Fire Safety, Sanitation and Security of all Cells
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Non-Indigent Inmates with Special Court Deadlines
KSP 100000-22	Special Management Unit Legal Services Program
KSP 100000-24	Resident Legal Services Office Library
KSP 110000-02	PFO I Transfers to Medium Security Institutions
KSP 110000-03	Governor's Meritorious Good Time Award Committee
KSP 110000-04	Pre-Parole Report
KSP 110000-06	General Guidelines of the Classification Committee *(Amended as of 9/12/84)*
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-11	Classification Committee—Transfer Requests
KSP 110000-12	Classification Committee—Inmate Work Assignments *(Amended as of 9/12/84)*
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-17	Detention Cells
KSP 120000-04	Academic Education *(Amended as of 5/15/84)*
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs *(Amended as of 9/12/84)*
KSP 120000-11	Religious Services—Staffing
KSP 120000-18	Religious Services—Religious Programming
KSP 120000-20	Marriage of Inmates *(Amended as of 9/12/84)*
KSP 120000-24	Muslim Services
KSP 120000-31	Extended Furloughs
KSP 120000-32	*Discharge of Inmates by Shock Probation (Added 6/19/84)*

(4) The Luther Luckett Correctional Complex Policies and Procedures:

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Checks
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 02-06-01	Property Inventory
LLCC 03-01-01	General Guidelines for LLCC Employees
LLCC 03-01-02	*Service Regulations, Attendance Accumulation and use of Leave (Added 8/27/84)*
LLCC 03-02-01	Proper Dress for Uniformed Personnel
LLCC 03-03-01	Employee Grievance Mechanism
LLCC 03-04-01	Employee Records
LLCC 03-05-01	Personnel Registers
LLCC 03-06-01	Work Planning: Employee Evaluations and Evaluation Control
LLCC 03-08-01	Shift Transfers *(Amended as of 7/9/84)*
LLCC 03-08-02	Rotation of Correctional Officers Between Central Security and Unit Management Staff
LLCC 03-09-01	Promotion Board
LLCC 03-10-01	Affirmative Action: EEO
LLCC 03-12-01	Confidentiality of Information by Consultants, Contract Personnel and Volunteers
LLCC 08-01-01	Offender Records
LLCC 08-02-01	Records—Release of Information
LLCC 11-02-01	General Population Status
LLCC 11-03-01	LLCC Population Categories
LLCC 11-07-01	Adjustment Procedure for Minor Rule Violation
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Yard, Walkway and Recreation Field Dress Code and Conduct *(Amended as of 6/18/84)*
LLCC 11-15-01	Post-Parole Furloughs
LLCC 11-16-01	Restoration of Forfeited Good Time
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs" Inmates *(Amended as of 7/9/84)*
LLCC 12-01-01	Special Management Inmates
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation

LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 14-01-01	Procedures for Providing Clothing, Linens and Other Personal Items
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Sick Call and Pill Call
LLCC 15-02-01	Psychological Services
LLCC 15-03-01	Pharmacy
LLCC 15-04-01	Dental Services
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Emergency and Specialized Health Services
LLCC 15-06-03	Emergency Medical Care Plan
LLCC 15-07-01	Medical and Dental Records
LLCC 15-08-01	Special Diets
LLCC 15-11-01	Provision of Psychiatric Services from the KCPC/Responsibilities of the Department of Corrections
LLCC 15-12-01	Disabled and Infirm Inmates
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-02-01	Inmate Grievance Procedure
LLCC 16-03-01	Inmate Law Library
LLCC 17-01-01	Due Process/Disciplinary Procedure
LLCC 18-01-01	Inmate Correspondence
LLCC 18-02-01	Inmate Visiting
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property *(Amended as of 7/2/84)*
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services *(Amended as of 7/9/84)*
LLCC 28-01-01	Privilege Trips
LLCC 28-03-01	Temporary Release/Community Center Release *(Amended as of 7/9/84)*
LLCC 28-04-01	Pre-Parole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

(5) The Northpoint Training Center Policies and Procedures:

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Institutional Legal Assistance
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-01-02	Fiscal Management: Accounting Procedures
NTC 02-01-03	Fiscal Management: Checks
NTC 02-01-04	Fiscal Management: Insurance
NTC 02-03-01	Fiscal Management: Audits
NTC 02-08-01	Inmate Canteen
NTC 03-01-01	Employee Dress Code
NTC 03-02-01	General Guidelines for NTC Employees *(Amended as of 8/1/84)*
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants
NTC 03-04-01	Shift Transfers *(Amended as of 8/1/84)*
NTC 03-05-01	*Work Planning and Performance Review (Added 9/7/84)*
NTC 03-06-01	Workers' Compensation
NTC 03-07-01	Merit System Registers and Placement of Advertisements
NTC 03-09-01	Maintenance Confidentiality and Challenge of Information Contained in Employee Personnel File
NTC 03-10-01	Employment of Ex-Offenders
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings
NTC 03-14-01	*Selection Retention, Promotion, and Lateral Transfer of Merit System Employees (Added 9/7/84)*
NTC 03-15-01	*Supervisor/Employee Conference (Added 9/7/84)*
NTC 03-16-01	*EEO—Affirmative Action (Added 9/7/84)*
NTC 04-01-01	Training and Staff Development
NTC 06-01-01	Offender Records
NTC 06-01-02	Records—Release of Information
NTC 10-01-01	Special Management Inmates
NTC 11-03-01	Food Service: General Guidelines
NTC 11-04-01	Food Service: Meals *(Amended as of 8/1/84)*
NTC 11-04-02	Menu, Nutrition and Special Diets *(Amended as of 8/1/84)*
NTC 11-05-02	Medical Screening of Food Handlers
NTC 11-06-01	Inspections and Sanitation
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates (Clothing and Linens)
NTC 12-02-02	Personal Hygiene Items
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Outside Hospital Security
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Pharmacy
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Evaluation
NTC 13-12-01	Disabled and Infirm Inmates
NTC 14-01-01	Legal Services Program
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments
NTC 15-03-01	Rules for Inmates Assigned to Minimum Security Living Area
NTC 15-03-02	Rules and Regulations for Dormitories
NTC 16-01-01	Mail Regulations *(Amended as of 8/1/84 and 9/21/84)*
NTC 16-02-01	Visiting Policy
NTC 16-02-02	Extended and Special Visits
NTC 16-02-04	Visiting Policy for Inmates Residing in the Minimum Security Living Area
NTC 16-03-01	Inmate Furloughs
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Pre-Parole Progress Report
NTC 18-01-02	Parole Eligibility Dates
NTC 18-02-01	Instructions for Scheduling 6 Month Classification Reviews

NTC 18-03-01	Classification Process
NTC 18-04-01	Classification Committee
NTC 18-05-01	Transfers to Other Institutions
NTC 18-06-01	Meritorious Housing Dormitory
NTC 20-01-01	Academic School Program
NTC 21-01-01	*Library Services (Added 9/7/84)*
NTC 22-01-01	Privilege Trips
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage in Inmates
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-02-01	Funeral Trips and Bedside Visits

(6) The Kentucky Correctional Institution for Women Policies and Procedures:

KCIW 01-06-01	Legal Assistance for Corrections Staff *(Amended as of 10/2/84)*
KCIW 01-08-01	Public Information and News Media Access *(Amended as of 9/30/84)*
KCIW 02-01-01	Comprehensive Insurance
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management/Checks
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen
KCIW 03-01-01	Travel Expense Reimbursement
KCIW 03-02-01	General Orders for all Staff
KCIW 03-03-01	Employee Grievance Procedure
KCIW 03-05-01	Employee Personnel File
KCIW 03-06-01	Affirmative Action EEO
KCIW 03-08-01	Work Planning and Performance Review
KCIW 03-09-01	Payroll and Personnel Manning Records
KCIW 03-10-01	Promotion Committee *(Amended as of 9/15/84)*
KCIW 03-11-01	Personnel Registers *(Amended as of 5/30/84)*
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders *(Amended as of 5/30/84)*
KCIW 06-01-01	Inmate Records
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation, Special Diets *(Amended as of 9/18/84)*
KCIW 11-03-01	General Guidelines for Food Service Manager *(Amended as of 9/30/84)*
KCIW 11-04-01	Health Standards, Regulations for Food Service Employees
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities and Clothing Issuance
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Medical and Dental Care
KCIW 13-01-02	Preliminary Health Evaluation *(Amended as of 9/18/84)*
KCIW 13-01-03	Drug Distribution
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services *(Amended as of 9/18/84)*
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Emotionally Disturbed Inmates
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 14-01-02	Inmate Rights and Responsibilities
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes *(Amended as of 10/2/84)*
KCIW 14-03-01	Inmates Not Subject to Discrimination
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Inmates Rules and Discipline
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-02	Inmate Mail Distribution
KCIW 16-02-01	Inmate Access to Telephone *(Amended as of 5/25/84 and 9/18/84)*
KCIW 16-02-02	*Intra-Institution Phone Calls (Added 9/15/84)*
KCIW 16-03-01	Inmate Visiting
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages (Added 6/2/84)
KCIW 17-01-01	Assessment/Classification Unit Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Unit Rules and Regulations
KCIW 17-02-01	Identification Department, Admissions and Discharges
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 19-01-01	Inmate Work Programs
KCIW 19-01-02	Inmate Work Program Participation
KCIW 20-01-01	Education Programs
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Pre-Parole Progress Report
KCIW 25-02-01	Temporary Release/Community Center Release and Code of Conduct
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leaves into the Community
KCIW 27-01-01	Indigent Fund
KCIW 27-02-01	Inmate Money and Property Control
KCIW 27-02-02	Release of CETA Money Earned

(7) The Food Service Manual, Offender Records Manual and the Classification Manual are hereby approved by the Secretary of the Corrections Cabinet as authorized by KRS 196.035, 197.020, 439.470, 439.590 and 439.640.

GEORGE W. WILSON, Secretary
MARTHA LAYNE COLLINS, Governor
APPROVED BY AGENCY: October 15, 1984
FILED WITH LRC: October 15, 1984 at Noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984, at 9 a.m., at the auditorium in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 1,895 employees of the Corrections Cabinet, 4,634 inmates, 3,449 parolees, 4,793 probationers, and all visitors to state correctional institutions.

(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—All of the costs involved with the implementation of this regulation are included in the operational budget.
2. Continuing costs or savings: Sames as 2(a)1
3. Additional factors increasing or decreasing costs: Same as 2(a)1
(b) Reporting and paperwork requirements: Weekly submission of policy revisions
(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? No. All policies are administered in a uniform manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:087. Explosives.

RELATES TO: KRS 351.350, 351.990
PURSUANT TO: KRS [13.082,] 351.335
NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. *Explosives.* [Surface Mining Regulations.] (1) Explosive magazines shall be posted with suitable danger signs so located that a bullet passing through the face of a sign will not strike the magazine.

(2) Containers of explosives or blasting agents shall be stacked in a stable manner, but not more than eight (8) feet high.

(3) Ammonium nitrate fuel oil blasting agents shall be physically separated from other explosives, safety fuse, or detonating cord stored in the same magazine and in such a manner that oil does not contaminate the other explosives, safety fuse or detonating cord.

(4) Special precautions shall be taken when blasting in close proximity to underground operations, and no blasting shall be done which would be hazardous to persons working underground.

(5) Only nonsparking implements shall be used to punch holes in an explosive cartridge.

(6) Delay connectors for firing detonating cord shall be treated and handled with the same safety precautions as blasting caps and electric detonators.

(7) Primers containing a detonator shall be prepared with the detonator container securely and completely within the explosive charge or within a suitable tunnel or cap well.

(8) Explosives or blasting agents shall be kept separate from detonators until charging is started.

(9) When blasting electrically, a blasting galvanometer, *blasting ohmmeter, or blasting multimeter designed specifically for the purpose of testing electric caps and circuits containing electric blasting caps,* [equipped with a silver chloride cell or blasters multimeters approved by M.E.S.A. under 30 CFR 18.68] shall be used to test:

(a) Resistance of individual *caps, series of caps,* [series] or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(b) Continuity of blasting lines prior to the connection of electric blasting cap series, and

(c) Total blasting circuit resistance prior to connection to the power source.

(10) Ammonium nitrate and the components used for the sensitizing thereof shall be stored, mixed, transported and used in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," or subsequent revisions.

MELVIN WILSON, Secretary
WILLARD STANLEY, Commissioner
LARRY SCHNEIDER, Director
APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 10, 1984 at 2:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 1984, at 10 a.m. in Room 302 of the Mineral Industries Building, 120 Graham Avenue, Lexington, Kentucky. Those interested in attending this hearing shall contact: Larry Schneider, Director, Division of Explosives and Blasting, P. O. Box 680, Lexington, Kentucky 40586.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry C. Schneider
(1) Type and number of entities affected: All persons and companies involved in the use of explosives.
(a) Direct and indirect costs or savings to those affected: This is a safety regulation and will have minimal effect on cost or savings. If there is any effect it may produce a small savings to the blasters by permitting modern electronic technology to be used in blasting galvanometers rather than the older and more expensive silver chloride power sources.
1. First year: Average savings of $20 per blasting operation.
2. Continuing costs or savings: Average savings of $20 per blasting operation per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): By permitting alternate types of equipment it should enhance 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: 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 alter-

natives were rejected: The only alternative to this amendment was to leave regulations the same, which would prohibit the newer technology to be used in blasting. The proposed amendment will enhance safety in blasting operations.

(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. This is a regulation pertaining to personal safety of those engaged in blasting and necessarily applies equally to all blasters regardless of any classifications that could be devised.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Explosives (Proposed Amendment)
SPONSOR:
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE: N/A
PROVISION/MECHANICS: N/A
FISCAL EXPLANATION: N/A

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Proposed Amendment)

805 KAR 4:110. Initiation of explosive charges; electric blasting.

RELATES TO: KRS 351.350, 351.990
PURSUANT TO: KRS [13.082,] 351.335
NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and assembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. Initiation of Explosive Charges; Electric Blasting. (1) Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

(2) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

(3) In any single blast using electric blasting caps, all caps shall be of the same style or function, and of the same manufacture.

(4) Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations, or an approved contractor or his designated representative.

(5) When firing a circuit of electric blasting caps, care must be exercised to insure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

(6) Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity.

(7) Bus wires shall be solid single wires of sufficient current-carrying capacity.

(8) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.

(9) A power circuit used for firing electric blasting caps shall not be grounded.

(10) In underground operations when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

(11) In underground operations there shall be a "lightning" gap of at least five (5) feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.

(12) When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

(13) Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

(14) When firing with blasting machines the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

(15) The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

(16) The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machine except under the direction of the blaster.

(17) *Blasters shall test all electric blasting caps and electric blasting cap circuits by using only a blasting galvanometer, blasting ohmmeter, or blasting multimeter, designed specifically for the purpose of testing individual electric blasting caps and circuits containing electric blasting caps. Such instruments must be clearly marked as being designed for such purposes, and shall be used in accordance with the manufacturer's recommendations.* [Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or blasters multimeter approved by M.E.S.A. under 30 CFR 18.68.]

(18) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a non-electric system shall be used.

(19) Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(20) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited.

(21) All blasting machines, other than rack-bar and twist type generators, shall have a normally open firing switch equipped with a spring device or other self-returning mechanism that automatically returns it to the non-firing position after the shot has been detonated.

MELVIN WILSON, Secretary
WILLARD STANLEY, Commissioner
LARRY SCHNEIDER, Director
APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 10, 1984 at 2:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 1984, at 10 a.m. in room 302 of the Mineral Industries Building, 120 Graham Avenue, Lexington, Kentucky. Those interested in attending this hearing shall contact: Larry Schneider, Director, Division of Explosives and Blasting, P. O. Box 680, Lexington, Kentucky 40586.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry C. Schneider
(1) Type and number of entities affected: All persons and companies involved in the use of explosives.
(a) Direct and indirect costs or savings to those affected: This is a safety regulation and will have minimal effect on cost or savings. If there is any effect it may produce a small savings to the blasters by permitting modern electronic technology to be used in blasting galvanometers rather than the older and more expensive silver chloride power sources.
1. First year: Average savings of $20 per blasting operation.
2. Continuing costs or savings: Average savings of $20 per blasting operation per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): By permitting alternate types of equipment it should enhance 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: 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: The only alternative to this amendment was to leave regulations the same, which would prohibit the newer technology to be used in blasting. The proposed amendment will enhance safety in blasting operations.
(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. This is a regulation pertaining to personal safety of those engaged in blasting and necessarily applies equally to all blasters regardless of any classifications that could be devised.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Initiation of Explosive Charges; electric blasting.
SPONSOR:
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No
TYPE OF MANDATE: N/A
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT: N/A
FISCAL SUMMARY:
MEASURE'S PURPOSE: N/A
PROVISION/MECHANICS: N/A
FISCAL EXPLANATION: N/A

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Division of Utility Engineers and Services
(Proposed Amendment)

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS [13.082,] 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.
(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:
(1) "Commission" means the Public Service Commission.
(2) "Utility" means an energy utility as defined in KRS 278.010*(3)* [(4) or a combined energy-non-energy utility as provided in KRS 278.040(2)].
[(3) "Combined energy-non-energy utility" means a utility which is an energy utility that also renders service as a non-energy utility as provided in KRS 278.040(2).]
(3) [(4)] "Customer" means any person, firm, corporation or body politic supplied service by any electric, gas or combined energy-non-energy utility.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause

shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified herein.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him *or her* at his *or her* location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on bills. Each bill rendered periodically by utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing rate schedule on the bill.

(b) By publishing in a newspaper of general circulation once each year or when rate is changed.

(c) By mailing to each customer once each year or when rate is changed.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two-twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly. *The utility may require an equal deposit from all applicants for the same class of service. If the utility retains a deposit for more than eighteen (18) months, it shall determine the actual annual bill of the customer. If the deposit differs by more than ten (10) dollars from the deposit which would be required based on the calculations above using the actual annual bill, the utility shall refund any excess and may collect any underpayment. No additional adjustment to the deposit may be made unless the customer's class of service changes.*

(2) The refund provisions contained in subsection (1) of this section notwithstanding, a utility shall not be required to refund any excess deposit if the customer's bill is delinquent by more than one (1) billing period at the time of recalculation.

(3) [(2)] The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deoposit.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof. *Such records shall be maintained for five (5) years from the date of the resolution of the complaint.*

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more than two (2) percent fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two (2) percent fast, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months. (See exception in subsection (5) of this section.)

(3) If the result of tests on a customer's meter shows an average error greater than two (2) percent slow, then the

customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two (2) percent fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has *passed* [overrun] *the refund shall be for the twelve (12) months specified in subsection (2) of this section plus the time* [to the extent that one-half (½) of the time elapsed since the last previous test exceeds twelve (12) months, the refund shall be for the twelve (12) months as specified in subsection (2) of this section and in addition thereto, a like refund for those months] exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall make a reasonable attempt to determine *whether there is an unusual deviation in a customer's consumption* [if the amount of consumption for the current billing period for each customer is unduly excessive]. If *such a deviation is found and the cause of the deviation cannot be determined* [a comparison of consumption indicates a necessity therefor], a test of the customer's meter shall be made, and if the meter *registers more than two (2) percent incorrectly* [is found to register incorrectly to the customer's prejudice more than two (2) percent], the utility shall recalculate the customer's bills in accordance with *subsections (2), (3) or (5) of this section* [the foregoing provisions]. *Should the utility determine that a customer's usage is unduly high, as defined in a tariff approved by the commission, the utility shall make a reasonable attempt to promptly notify the customer in writing. In those instances in which the seriousness of the situation requires more immediate notice, the utility shall notify the customer by the most expedient means available. If a premises visit is required, the customer must be notified, either before or after the visit, of the visit and the reason for it.*

(7) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19___, the meter bearing identification No._____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (On premises or elsewhere) and found to register _____ (Percent fast or slow).

The meter was tested on _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (Charge or Credit) you with the sum of $_____, which amount has been noted on your regular bill.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) *working* days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a reconnection charge under the provisions of subsection (2) of this section, shall submit for commission approval a formal application setting out:

(a) The actual average cost of making such reconnections; and

(b) The effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with *the utility's or commission's* [its] rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least ten (10) days written notice of such intention, *delivered to an adult member of his or her household or mailed to his or her* [mailed to his] last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service shall be cut off without notice or refused, provided that the utility notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property, the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) Except as provided in subsection (2) of this section, a utility shall not be required to furnish service to any applicant when such applicant is indebted to the utility for service furnished until such applicant shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) A gas or electric utility may discontinue service under the following conditions:

(a) For nonpayment of bills—ten (10) day notice. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least ten (10) days' written notice, but the cut-off shall not be effected before twenty-seven (27) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until thirty (30) days elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued when the customer and the utility have reached agreement on a partial payment plan pursuant to *subparagraph 1 of this paragraph* [paragraph (b) herein] and the customer is meeting the requirements of the plan. The written notice for any discontinuance of service shall advise the customer of his or her rights under *this paragraph, sub-paragraph 1 and sub-paragraph 2 of this paragraph* [paragraphs (a) and (b) herein] and of his or her right to dispute the reasons for such discontinuance.

1. [(b)] Employee available to answer consumer questions and negotiate partial payment plan.

a. Every gas and electric utility [subject to the jurisdiction of the commission] shall have an employee available [during regular working hours] to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. *Utilities shall keep the designated employee informed of the commission's regulations regarding customer bills. If a customer indicates to any utility personnel that they are experiencing difficulty in meeting their current utility bill, that employee shall explain to the customer his or her rights under this paragraph, this subparagraph and subparagraph 2 of this paragraph.* Such employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his or her financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service.

b. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall make the necessary provisions so that all customers may contact the utility employee without charge. Such provisions may include a policy allowing customers to make collect calls to the utility.

c. Each Class A or B utility (as defined by the Uniform System of Accounts) shall have at least one (1) employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established working hours but not less than seven (7) hours per day, five (5) days per week excluding holidays.

d. Each Class C or D utility (as defined by the Uniform System of Accounts) shall have an employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established office hours but not less than seven (7) hours per day, one (1) day per week.

2. [(c)] Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. Upon written certification from one (1) of its offices a customer who is eligible for energy assistance under the Department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, and who has been *issued a ten (10) day notice between December 1 and March 1 for nonpayment of a gas or electric bill* [given a ten (10) day notice for nonpayment of a gas or electric bill rendered between December 1 and March 1,] and who presents such notice to the Department for Social Insurance, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill as soon as possible but not later than *October 15* [August 1], the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under *this paragraph, subparagraph 1 of this paragraph and this subparagraph* [paragraphs (a) and (b) of this subsection], as required by paragraph (a) *of this paragraph* [above], the ten (10) day notice or a bill insert sent with the ten (1) day notice shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet for Human Resources, Department for Social Insurance. [Information as to such limits may be obtained from the Department for Social Insurance.] Referral of such customer to such office of the department may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.

3. [(d)] Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply only to a utility's residential customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application, a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that siad exemption should be allowed.

(b) [(e)] For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service

or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) A water, sewage or telephone utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, *except as provided in 807 KAR 5:008,* where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's *or commission's* rules and regulations. This charge may include the cost of disconnecting the service.

(2) The charges, however, shall be applied uniformly within reasonable classifications throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:021, 807 KAR 5:041 and 807 KAR 5:066.

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the commission's Meter Standards Laboratory. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ *meter testers* [metermen] certified by this commission. These certified *meter testers* [metermen] shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as *meter testers* [metermen] shall submit the names of applicants on the commission's form entitled "Application for Appointment of *Meter Testers* [Metermen]" and after compliance with the requirements [as] noted in this form, the applicant may be certified as a *meter tester* [meterman] and furnished with a card authorizing him *or her* to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him or her to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him or her as an employee of the utility, or carry a badge or other identification which will identify him or her as an employee of

the utility, the same to be shown by him or her upon request.

Section 15. Meter Test Records. (1)(a) Test cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the *meter tester* [meterman]. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter.

(b) *The record of the prior periodic test of each meter shall be maintained for at least ninety (90) days after the current test has been made or until a refund or billing has been made or it is determined that a refund or billing is not to be made in accordance with Section 9 of this regulation.* [The complete record of tests of each meter shall be continuous at least two (2) periodic tests and in no case less than two (2) years.]

(2) [(a)] History [cards]. Each utility shall keep numerically arranged and properly classified [card] records giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These [card] records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The [card] records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission.

[(b) When the records required above are kept in a readily available form posting to the history card is not necessary.]

(3) Sealing of meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 18. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.

Section 19. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 20. Complaint Tests. (1) Any customer of the utility may request a meter test by written application to the commission accompanied by payment of such fee for the test as prescribed below. Such request may not be made more frequently than once each twelve (12) months. Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until completion of such test.

(2) If a meter tested upon complaint of a customer is found to register not more than two (2) percent fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two (2) percent fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.

(3) The charges fixed by the commission for making such tests are as follows:

(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:

Amperes Rated Capacity	Fee
30 and under	*$ 6*[2]
Over 30 to 100	*12*[4]
Each additional 50 amperes or factor thereof	*3*[1]

Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:

Kilowatts Rated Capacity	Fee
5 KW and under	$ *6*[2]
Over 5 to 25	*12*[4]
Over 25 to 100	*24*[8]
Over 100 to 500	*48*[16]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(b) Gas. Displacement type meters operating on distribution system pressures:

Capacity in Cu. Ft. Per Hour	Fee
1,000 cu. ft. per hour and under	$*12*[4]
Over 1,000 to 10,000	*24*[8]
Over 10,000 to 100,000	*36*[12]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(c) Water:

Size	Fee
Outlet 1 inch or less	$*12*[4]
Outlet over 1 inch to 2 inches	*18*[6]
Outlet over 2 inch to 3 inches	*24*[8]
Outlet over 3 inch to 4 inches	*30*[10]

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.

Section 21. Safety Program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 22. Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:

1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.

2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.

3. Substations where the primary voltage is sixty-nine (69) KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.

4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.

5. Electric lines operating at sixty-nine (69) KV or greater (including insulators, conductors, and supporting facilities).

(b) At intervals not to exceed one (1) year:

1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.

2. Substations where the primary voltage is less than sixty-nine (69) KV but is fifteen (15) KV or greater.

(c) At intervals not to exceed two (2) years: Electric lines operating at voltages of less than sixty-nine (69) KV (including insulators, conductors and supporting facilities).

(d) Other facilities:

1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.

2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [1.] all portions of the system (including those listed above) which are the subject of the report.

(f) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended by the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for certain inspections provided for in [Department of Transportation,] *49 CFR* Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified and for certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:

1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.

2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.

3. The curb box on service *line* shall be inspected for accessibility.

(b) Other facilities:

1. Utility buildings inspected for compliance with safety codes at least annually.

2. Construction equipment *under the control of the utility* inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals: individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals *not to exceed the periodic meter test intervals* [of meter change]: the curb box *and valve* on *the* service *line* shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [1.] all portions of the system (including those listed above) which are the subject of the report.

(f) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5) (a) Each water utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Source of supply:

a. Dams, physical and structural, annually.

b. Intake structures, physical and structural, annually.

c. Traveling screens, physical and structural and safety of operation, annually.

2. Purification:

a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.

b. Chemical feed equipment, for proper and safe operation, annually.

c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.

d. Hydrants, for proper and safe operation, annually.

e. Utility buildings, inspection for compliance with safety codes, annually.

f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.

g. Mains and valves, leaks, annually.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [1.] all portions of the system (including those listed above) which are the subject of the report.

(c) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(6) (a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety—Every two (2) years.

2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions—At least annually.

3. Station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring—When on customer's premises.

4. Utility buildings: Inspection for compliance with safety codes—At least annually.

5. Construction equipment: Inspection for defects, wear and operational hazards—At least quarterly.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, [1.] all portions of the system (including those listed above) which are the subject of the report.

(c) [2.] Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 23. Reporting of Accidents. Each utility shall notify the commission of any *utility related* accident which results in death or serious injury to any person or substantial property damage. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph. *Natural gas utilities shall report accidents in accordance with the provisions of 807 KAR 5:027.*

Section 24. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

RICHARD D. HEMAN, JR., Chairman
MELVIN WILSON, Secretary

APPROVED BY AGENCY: October 11, 1984

FILED WITH LRC: October 11, 1984 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 28, 1984, at 10 a.m., EST, in the Public Service Commission hearing room on Schenkel Lane in Frankfort, Kentucky. Those interested in attending this hearing shall contact: Larry D. Stanley, Executive Director, Kentucky Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John S. Van Volkenburg

(1) Type and number of entities affected: All utilities subject to PSC jurisdiction (SSI).

(a) Direct and indirect costs or savings to those affected:

1. First year: $500,000 (tariff filings primarily)

2. Continuing costs or savings: $220,000

3. Additional factors increasing or decreasing costs (note any effects upon competition): Some savings will be realized due to reduced retention time for files/records and reduced duplication—cost savings cannot be estimated.

(b) Reporting and paperwork requirements: Two "one time" tariff filings.

(2) Effects on the promulgating administrative body: None except to review tariff filings.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Increased review of tariff filings—minimal costs.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposed amendments are designed to improve regulatory efficiency while maintaining public protection. Alternatives considered were contrary to this goal.

(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? Yes. Section 11(2)(a) divides some smaller utility responsibilities by utility size. The smaller utility responsibilities are less stringent due to the lower customer base, fewer complaints.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:070. Licensing; owners, drivers, trainers, grooms and agents.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.700, 230.710

PURSUANT TO: KRS [13.082,] 230.630(3),(4),(7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, grooms and agents.

Section 1. Owners. Every person owning a horse that is entered at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Said application shall be on forms provided by the commission and shall be filed at any commission office. Such license shall be presented to the clerk of the course at the time said horse is entered in a race.

Section 2. Leased Horses. Any horse under lease must race in the name of the lessee and a copy of such lease must be filed with the Kentucky Harness Racing Commission. No horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and unless both lessor and lessee are current members of the commission in good standing. Persons violating this rule may be fined, suspended or expelled.

Section 3. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Such application shall be on forms provided by the commission. Applications may be filed at any commission office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association, the commission may, at
its discretion, issue a provisional or full driver's license to those who qualify as hereinafter set out.

Section 4. Qualification for a Provisional and/or Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission in addition to any other requirements mentioned herein shall:

(a) Submit evidence of good moral character.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this must include the equivalent of one (1) year's training experience.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye blind, at least 20/30 corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association.

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel meeting.

(3) In the event any person is involved in an accident on the track, the commission may order such person to submit to a physical examination and such examination must be completed within thirty (30) days from such request or his license may be suspended until compliance therewith.

(4) All penalties imposed on any driver may be recorded on the reverse side of his commission driver's license by the presiding judge.

(5) The Kentucky Harness Racing Commission reserves the right to require any driver to take a physical examination at any time.

Section 5. Trainers' Application for License. An applicant for a license as trainer shall be licensed by the United States Trotting Association and must be at least eighteen (18) years of age and satisfy the commission that he possesses the necessary qualifications both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a trainer in the preparation, training, entering and managing of horses for racing.

Section 6. Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7. Grooms' Application for License. An applicant for a license as a groom must satisfy the commission that he possesses the necessary qualifications, both mental and physical to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8. (1) The holder of a license issued by the United States Trotting Association or a holder of a license

issued by the Kentucky Harness Racing Commission for the prior year, may be presumed to be qualified to receive a license, all others must be tested by the deputy commissioner (supervisor of racing), his assistant, or agent of the commission, at such locations as shall be designated by the commission as to the capability of said applicant for a license to perform the functions required of him. Said tests shall be either in writing or by demonstrations or both and shall be administered in a uniform manner. The cost of said testing shall be borne by the applicant.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 9. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the rules of this commission.

(2) Failure to drive when programmed unless excused by the judges.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive.

(4) Appearing in the paddock in an unfit condition to drive.

(5) Fighting.

(6) Assaults.

(7) Offensive and profane language.

(8) Smoking on the track in colors during actual racing hours.

(9) Warming up a horse prior to racing without colors.

(10) Disturbing the peace.

(11) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 10. Colors and Helmet. Drivers must wear distinguishing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. *No one will be permitted to jog, train, warm-up or drive a horse at any time during a race meet licensed by the Kentucky Harness Racing Commission unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation's 1984 Standard for Protective Headgear For Use in Harness Racing. Any helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.* [No one shall drive during the time when colors are required on a race track unless he is wearing a type of protective helmet, constructed with a hard shell, and containing adequate padding and a chin strap in place. This shall include drivers of prompters during time trials.]

Section 11. Miscondut in Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed $100 for each such offense.

Section 12. Driver Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both by order of the judges.

Section 13. Amateur Definition. An ameteur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Colors. Drivers holding an "A" license or drivers with a "V" license who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary

APPROVED BY AGENCY: September 28, 1984
FILED WITH LRC: October 12, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on November 21, 1984 at 10 a.m. at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Road, Lexington, Kentucky 40511 at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing

(1) Type and number of entities affected: All horsemen.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of approved safety helmet.
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: 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: 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. Regulation affects all horsemen.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:150. Officials; deputies and assistants.

RELATES TO: KRS 230.620(4), 230.630(1),(2),(3), 230.640, 230.650, 230.660
PURSUANT TO: KRS [13.082,] 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to set out the duties and responsibilities of commission officials, deputies and assistants.

Section 1. Executive Racing Secretary. The Governor shall appoint a secretary for the commission for a term of four (4) years. The secretary shall receive an annual salary fixed by the commission and shall perform such duties as prescribed by the commission.

Section 2. Deputy Commissioner (Supervisor of Racing). A deputy commissioner (supervisor of racing) may be appointed by the commission and shall be representative at large of the commission. He shall have general supervision over all race officials and licensees of the commission. He shall supervise the licensing of all those persons required to be licensed by the commission at associations. He shall generally supervise the conduct of the racing, the pari-mutuel operations, and the testing of horses. His authority is extended to cover all powers and duties of the commission, subject to review by the commission, except for such limitations expressly stated in the law or the commission's regulations. He shall have authority to conduct inquiries, and shall submit a report of all proceedings thereon to the commission. He shall at all times have access to all parts of the course, plant and grounds, including the pari-mutuel department. The compensation of the deputy commissioner (supervisor of racing) shall be fixed by the commission and paid by the commission or other branches of state government. The commission in its discretion may appoint such assistants to the deputy commissioner (supervisor of racing) as it may deem necessary who shall have the same authority as the deputy commissioner (supervisor of racing) in his absence but such assistant shall be junior in authority to the deputy commissioner (supervisor of racing) at all times. In addition, the commission may appoint any other assistants as it may deem necessary.

Section 3. The commission may, in its discretion, designate one (1) of the officials as its representative at that particular meeting. Said designeee shall be required to perform all of the functions of a deputy commissioner (supervisor of racing).

Section 4. It shall be the duty of all the officials to enforce the rules and regulations of the commission.

Section 5. The deputy commissioner (supervisor of racing) or any official or employee appointed or approved by the commission may be removed by the commission in its discretion. The chairman, or in his absence from the state, the vice-chairman, may suspend the deputy commissioner (supervisor of racing) or any official or employee appointed or approved by the commission until such time as the commission may act to remove or reinstate said deputy commissioner (supervisor of racing), official, or employee.

Section 6. In an emergency, due to incapacity or absence, the deputy commissioner (supervisor of racing) or in his absence, the licensee may appoint a substitute official to serve pending a new official approved by the commission.

Section 7. Commission Director of Security. The commission may employ an investigator experienced in police work who shall advise the commission as to any person on association grounds, or among license applicants, whose conduct or reputation is such that such person's presence on association grounds may reflect on the honesty and integrity of standardbred racing or interfere with the orderly conduct of standardbred racing. The commission director of security shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the National Association of State Racing Commissioners and the United States Trotting Association. Said file also shall contain reports received from all available agencies as to investigations, arrest records, and other information; said file also shall contain reports as to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions.

(2) Investigate and ascertain the truth of statements made on license applications.

(3) Investigate possible infractions of racing rules at the request of the commission or stewards.

(4) Participate and cooperate with members of the track security police, state and local police on all other investigations and conduct pertaining to racing in the Commonwealth.

Section 8. Commission Supervisors of Pari-Mutuel Betting. (1) The commission shall employ supervisors of pari-mutuel betting with accounting experience who shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the commonwealth, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and a final report at the conclusion of each race meeting in the Commonwealth.

(2) Such daily reports to the commission shall show: For each race: number of horses started, number of betting interests, total money wagered in each betting pool, and refunds, if any for each day. The sum of all betting pools, and total refunds also, total pari-mutuel handle for the comparable racing day for the preceding year, and cumulative total and daily average pari-mutuel handle for the race meeting.

(3) Such daily reports also shall show: amount of state pari-mutuel tax due; taxable admissions, tax exempt admissions, total admissions; temperature, weather and track conditions, post time of first race; program purses, distance and conditions of each race; any minus pools resulting with explanation.

(4) The commission supervisors of pari-mutuel betting shall submit to the commission on or before thirty (30) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and such other information as the commission may require.

(5) The commission supervisors of pari-mutuel betting or their representatives shall have access to all association books, records, and pari-mutuel equipment for checking accuracy of same.

Section 9. The commission, its executive racing

secretary, representatives, officials and employees shall at all times have full access to the course, plant and grounds, including the judges' stand, and pari-mutuel department.

Section 10. Commission Veterinarian. (1) The commission shall employ a graduate veterinarian licensed in Kentucky and experienced in equine medicine. He shall advise the commission and the judges on all equine veterinary matters. The commission veterinarian shall supervise and control the test barn area, supervise the collection of samples for the testing of horses for prohibited medication described in 811 KAR 1:090. The commission veterinarian shall also inspect horses programmed to race that may be lame, sick, or too weak to race.

(2) No veterinarians designed as officials at any race meeting shall practice their profession upon the grounds at such race meeting, except, however, such veterinarian may act in case of an emergency, and only for so long as such emergency may exist; nor shall he buy or sell, for himself or another any horse under his supervision; nor shall he wager on a race under his supervision. *The office of commission veterinarian, in the test barn area, shall be equipped with a telephone that would allow direct communication to the judges stand and paddock judge.*

Section 11. Commission Chemist. (1) The commission is authorized to employ a graduate chemist experienced in chemical testing techniques who shall be responsible for conducting tests on urine, saliva and blood specimens from standardbreds delivered to him by the commission veterinarian or any other person so authorized by the commission, and shall be responsible for conducting any other tests requested or required by the commission. The commission chemist is authorized on behalf of the commission, to acquire, operate and maintain, or to provide by contract approved by the commission, a chemical testing laboratory and related facilities.

(2) The commission chemist shall report to the presiding judge and the deputy commissioner all substances he may find in the chemical tests which are not normal in the body of the horse as outlined in 811 KAR 1:090.

Section 12. Director, Standardbred Development Fund. (1) A director shall be appointed by the Kentucky Harness Racing Commission to supervise the registration of horses for entry into races provided by the Kentucky Standardbred Developement Fund. He shall assist the agency head and commissioners in the development and enforcement of policies, regulations and operational methods of the Kentucky Standardbred Development Fund. He shall be the liaison between breeders, horsemen, and track managers as to the scheduling of sire stakes events. The director shall supervise one (1) employee, an administrative specialist, and review all statistical charts and reports of purses and contributions from the mutuel handle that concern the fund. He shall supervise all advertising in the major horse publications regarding race dates, registered sires in Kentucky and nominating dates.

(2) The compensation of the director shall be fixed by the commission. The compensation shall be paid out of the Kentucky Standardbred Development Fund.

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary
APPROVED BY AGENCY: June 22, 1984
FILED WITH LRC: October 9, 1984 at Noon
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on November 21, 1984, at 10 a.m., at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511-1278, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing
(1) Type and number of entities affected:
(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: None
(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: None
(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? No. N/A

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:195. Track deductions from wagers.

RELATES TO: KRS 230.750
PURSUANT TO: KRS [13.082,] 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate the deductions authorized by the track from [the] pari-mutuel wagering.

Section 1. *Track "take" is money deducted by the operators of a harness racing track from the gross amount wagered through a pari-mutuel system. This "take," including the tax levied in KRS 138.510, shall not exceed eighteen (18) percent of the gross amount handled on straight wagering pools and twenty-five (25) percent of the gross amount handled on multiple wagering pools. The breaks shall be made and calculated to the dime.* [The deductions of track "take," including the tax levied in KRS 138.510, deducted from the gross amount wagered by the persons, corporation or association which operates a harness racing track at which betting is conducted through a pari-mutuel or other system shall not exceed eighteen (18) percent of the gross amount handled on straight wagering

pools and twenty-five (25) percent of the gross amount handled on multiple wagering pools, and the breaks, which breaks shall be made and calculated to the dime.]

CARL B. LARSEN, Supervisor of Racing
MELVIN WILSON, Secretary
APPROVED BY AGENCY: September 28, 1984
FILED WITH LRC: October 12, 1984 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on this regulation on November 21, 1984 at 10 a.m. at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing shall notify in writing Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051-H Newtown Road, Lexington, Kentucky 40511 at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen, Supervisor of Racing
(1) Type and number of entities affected: Pari-Mutuel Harness Tracks
(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 additional
(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 additional
(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: 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 proposed change clarifies existing language.

Tiering:
Was tiering applied? No. Regulation affects all pari-mutuel harness tracks.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it.

Section 1. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the regulations of the department and other governing authorities.
(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

Section 2. Water Required. (1) Every building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.
(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 3. Water Service. (1) The water service piping to any building shall be not less than three-fourths (¾) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times.
(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they can be placed in the same trench provided:
(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.
(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.
(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 4. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.
(2) Piping which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.
(3) Non-potable water may be used for flushing water closets and urinals, provided such water shall be piped in an independent system.
(a) When a dual water distribution system is used, the non-potable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. Each outlet on the non-potable water distribution system which might be used for drinking or domestic purposes shall be permanently posted: DANGER—UNSAFE WATER. Each branch, fitting or valve shall be identified by the word—"NON-POTABLE WATER" either by signs or brass tags that are permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.
(4) Any backflow device or cross-connection control device shall be approved by the department.
(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventor.
(6) No private water supply shall be interconnected with any public water supply.

Section 5. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that will prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 6. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent any contamination of the potable water supply system.

Section 7. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (¾) inch. The hot and cold water piping shall extend three-fourths (¾) inch in size to the first fixture branch. No two (2) one-half (½) inch fixture branches are supplied from any one-half (½) inch pipe. *(EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (½) inch branch: a flush tank water closet, a lavatory and/or drinking fountain.)*

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to any fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and in every instance shall be brought to the floor or wall adjacent to the fixture. No concealed water branch pipe shall be less than one-half (½) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	½
Combination sink and tray	½
Cuspidor	½
Drinking fountain	½
Dishwasher (domestic)	½
Kitchen sink (res.)	½
Kitchen sink (com.)	½ or ¾ as required
Lavatory	½
Laundry tray	½
Sinks (service, slop)	½
Sinks flushing rim	¾
Urinal (flush tank)	½
Urinal (direct flush type)	½ or ¾ as required
Water closet (tank type)	½
Water closet (flush valve type)	1
Hot water boilers	¾
Hose bibs	½
Wall hydrant	½
Domestic clothes washer	½
Shower (single head)	¾

(3) Water Hammer. In all building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) Where mechanical shock absorbers are installed, they shall be in an accessible place.

(b) Where mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

(4) Inadequate Water Pressure. Whenever water pressure from the source of supply is insufficient, 15 lb. or less to provide adequate flow at the fixture outlets, a booster pump and pressure tank or other approved means shall be installed in the building water supply system.

(5) Variable Street Pressures. When the source of water supply has a fluctuation, the water distribution system shall be designed for the minimum pressure.

Section 8. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to B-587-73, seamless stainless steel tubing, Grade H conforming to CS A-268-68, reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene plastic pipe conforming to ASTM D-2239-69, PVC plastic pipe conforming to ASTM 1785, and CPVC plastic pipe conforming to CS D-2846-70, PVC SDR 21 and SDR 26 conforming to ASTM D-2241, polybutylene pipe conforming to ASTM D-3309 with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. *(EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings. Its use between the diverter spout of a tub and the shower nozzle is prohibited.)* Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM 3309, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polythylene, PVC or CPVC be used below ground under any house or building.

Section 9. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and will provide non-scald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 10. Water Supply Control. (1) A main shut-off valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition,

a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shut-off valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) Each family unit in a two-family or multi-family dwelling shall have each family unit controlled by an arrangement of shut-off valves which will permit each unit to be shut-off without interfering with the cold water supply to any other family unit or portion of the building.

(4) In all buildings other than dwellings, shut-off valves shall be installed which permit the water supply to each piece of equipment to be isolated without interference with the supply to other equipment.

(5) Each fixture or group of bath fixtures shall be valved and each lawn sprinkler opening shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or in lieu each group of fixtures shall be valved.

(6) A group of fixtures or fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back to back on a common wall.

(7) The cold water branch to each hot water storage tank or water heater shall be provided with a shut-off valve located near the equipment and only serving this equipment.

Section 11. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 12. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. Relief devices shall be installed on a pneumatic water system.

Section 13. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 14. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water heater has a warning label advising that a nontoxic heat exchanger fluid must be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 15. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air-conditioner or heat pump water heater. These heat exchangers that transfer heat to potable water shall be double wall. This device must be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump must be utilized.

Section 16. Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature must not exceed 150 degrees Fahrenheit. It must utilize not less than three-fourth (¾) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit. (Relates to 815 KAR 20:070.)

Section 17. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two (2) three-fourths (¾) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intrevening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which will encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shut-off valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

CHARLES A. COTTON, Commissioner
MELVIN H. WILSON, Secretary
APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 9, 1984 at 1:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 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 November 21, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl VanCleve
(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: Minimal cost due to time required to complete regulatory impact analysis.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See item 2(a) 1. above.
(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:
(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. N/A

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.

RELATES TO: KRS 17.250, 45A.080, 322.360
PURSUANT TO: KRS 17.250(4)
NECESSITY AND FUNCTION: KRS 17.250 requires that prior to any expenditures of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans must be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of these regulations is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Center Fund.

Section 1. Definitions. (1) "Commission" for the purpose of these regulations shall mean the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.
(2) "Cost estimate" for the purpose of these regulations shall mean an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It can also mean the estimated cost of land or buildings to be purchased.
(3) "Quotations or bids" for the purpose of these regulations shall contain the same information as cost estimates.

Section 2. Eligibility. (1) To qualify to receive aid under the Firefighter Training Center Fund, fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments or groups or associations of fire departments operated and maintained on a non-profit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, must maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.
(2) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of *fifty (50)* [seventy-five (75)] percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

Section 3. Participation Requirements. (1) There shall be submitted to the commission an application which shall contain, but not be limited to, a letter of application, containing a general statement of intent; a list of fire departments and agencies that will use the facility; a list of what is available to the applicant, such as land, free labor or materials, etc.; and name of an agent or contact person; a drawing or sketch of the proposed training center, as well as building drawing if applicable; a cost estimate as stated in the definitions of these regulations.
(2) All applications must comply with the state laws applicable to Capital Construction projects and the requirements stated in this regulation.
(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than $10,000.
(b) Expenditures exceeding $10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the fire department and assure that purchases will be at the lowest cost.
(c) Capital Construction projects exceeding the cost of $25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.
(d) Equipment expenditures exceeding $50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.
(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall recommend to the State Fire Marshal which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
(2) No funds shall be expended for any purpose other than that for which it is approved without the approval of the commission.
(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.
(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.
(5) When expenditures are made, receipts for funds expended during each quarter shall be sent by the 15th of the following month. Receipts for January, February and

March should be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and/or equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

CHARLES A COTTON, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: October 9, 1984

FILED WITH LRC: October 9, 1984 at 1:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 25, 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 November 20, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(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: Frees up more funds for fire departments

(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. N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 8:020. Policies and procedures for local health department operations.

RELATES TO: KRS Chapter 212

PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410

NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.

Section 1. Local Health Policy Manual. The policies set forth in the *October 15,* [September 15,] 1984, edition of the "Local Health Policy Manual" governing the maintenance and operation of local health departments are hereby adopted by reference.

Section 2. Financial Management Manual. The policies set forth in the *October 15,* [September 1,] 1984, edition of the "Financial Management Manual" governing the operation of the financial management systems used by local health departments are hereby adopted by reference.

Section 3. Patient Services Reporting System Manual. The policies set forth in the May 1, 1984, edition of the "Patient Services Reporting System Manual" governing the collection of patient health/medical services delivered by local health departments are hereby adopted by reference.

Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.

Section 5. Planning Manual for Local Health Departments. The policies set forth in the February, 1984, edition of the "Planning Manual for Local Health Departments" governing the annual program planning process and procedures of local health departmetns are hereby adopted by reference.

Section 6. Standards Manual for Local Health Departments. The policies set forth in the May 15, 1984, edition of the "Standards Manual for Local Health Departments" governing the programmatic operations of local health departments are hereby adopted by reference.

Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by reference.

Section 8. On-Line Environmental Health Management Information System. The policies set forth in the February 14, 1984, edition of the "On-Line Environmental Health

Management Information System" manual are hereby adopted by reference.

Section 9. Consumer Product Safety Commission's Hazardous Substances Labeling Guide. The policies set forth in the May 25, 1979, edition of the "Consumer Product Safety Commission's Hazardous Substances Labeling Guide" are hereby adopted by reference.

Section 10. Consumer Product Safety Commission's In-Depth Investigations Manual. The policies set forth in the January 28, 1983, edition of the "Consumer Product Safety Commission's In-Depth Investigations Manual" are hereby adopted by reference.

Section 11. MCH Maternity Manual. The policies set forth in the May 11, 1984, edition of the "MCH Maternity Manual" governing the operation of the prenatal program conducted by local health departments are hereby adopted by reference.

Section 12. Sudden Infant Death Syndrome Program. The policies set forth in the May 11, 1984, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 13. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the May 11, 1984, edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments are hereby adopted by reference.

Section 14. Standards for Regional Pediatric Clinics. The policies set forth in the May 11, 1984, edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.

Section 15. Standards for Preventive Health Care in Children. The policies set forth in the May 11, 1984, edition of the "Standards for Preventive Health Care in Children" manual governing the operation of well child programs conducted by local health departments are hereby adopted by reference.

Section 16. 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.

Section 17. Summary of Amendment. (1) *In relation to Section 1 relating to the Local Health Policy Manual strike LHP 100-1 dated 7-1-82 and substitute in lieu thereof LHP 100-1 dated 10-15-84 to enable local health departments to request a waiver of a local health policy because of undue hardship.* [In relation to Section 1 of this regulation relating to the Local Health Policy Manual, strike LHP-400-11a dated 5/6/83 of the Local Health Policy Manual and substitute in lieu thereof LHP-400-11a dated 9-15-84 which permits local health departments to assess minumum charges of three (3) dollars or less for health servies at the full rate of charge.]

(2) *In relation to Section 2 relating to the Financial Management Manual, strike page 46 (undated) and substitute a new page 46 dated 10-15-84 which deletes reference to various types of personnel reporting forms, other than the Request for Personnel Action form (P-2).* [In relation to Section 1 of this regulation relating to the Local Health Policy Manual, strike LHP 500-8 dated 7-1-82 and substitute in lieu thereof new LHP 500-8 dated 9-15-84. This amendment authorizes local health department offices to be closed on presidential election day.]

[(3) Add new page 89A dated September 1, 1984 to the Financial Management Manual described in Section 2 of this regulation to authorize a special fee schedule in the Barren River District Health Department Home Health Program in order to comply with the requirements of special federal grant number 04-H-00-2818-01.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 11, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, KY. 40621.

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020—Section 1 (Local Health Policy Manual, LHP 100-1)
Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: LHDs-42
(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: Requests for waivers are required to be in writing.
(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: None

Tiering:
Was tiering applied? No. N/A

REGULATORY IMPACT ANALYSIS

Regulation Number: 902 KAR 8:020—Section 2 (Financial Management Manual, 46)
Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: LDHs-40
(a) Direct and indirect costs or savings to those affected:
1. First year: Immeasurably small costs.
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: Requires 2-3 agencies to substitute a different form so all reporting is uniform.
(2) Effects on the promulgating administrative body: Uniform reporting increases accuracy and productivity.
(a) Direct and indirect costs or savings:
1. First year: Some slight savings in employee time.
2. Continuing costs or savings: Same as above.
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 is most efficient procedure for all agencies and the state offices concerned.
(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: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. 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, 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 September 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 *October* [September] 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 September 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 *October* [September] 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 September 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 September 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.

Section 12. Summary of Amendment. *Section 4 is revised as follows:*

EASTERN STATE HOSPITAL POLICIES—D2

D-2 Section I. "Abuse of Patients by Hospital Employees" has been revised to include the phrase "or intimidating a patient or encouraging a patient to do harm to self or other," under the definition of Verbal Abuse.

D-2 Section II. Annual Leave policy is changed to reflect changes made by the State Department of Personnel for benefits and the part-time employees.

D-2 Section I. A new policy "Neglect to Preserve Patient's Health, Safety and Welfare" more clearly explains the forms neglect may take. Failures to report instances of physical or verbal abuse, or of neglect are covered under this new policy.

Section 6 is revised as follows:

F-32	*#5*	*A new policy is added in the Employee Health Program to explain proper follow-up procedures for patients exposed to active tuberculosis.*
F-3	*#11*	*An additional treatment room was added in March 1984. Policy is revised to show this change.*
F-9		*Organizational chart is revised to add Infection Control/Employee Health Nurse.*
F-9	*#9*	*Oral reprimand substituted for written disciplinary warning notice to correspond with steps of progressive discipline.*
F-9	*#22*	*Infection control nurse is now responsible for reviewing employee infections to assist in preventing employees working with transmittable infections.*
F-9	*#23*	*Oral reprimand substituted for written disciplinary warning notice to correspond with steps of progressive discipline.*
F-9	*#27*	*Policy revision to delete pay-for-performance provision.*
F-9	*#31*	*Color of ID cards is deleted.*

[Section 2 is revised as follows:

HAZELWOOD POLICIES—B1

87-1-2	#2D	deleted statement relating to apparent physical and/or emotional injury, additional member added to fact finding committee
87-2-1	#1D	the organization has changed to list new Facility Director
87-3-1	#1A	more clearly defines who is responsible in absence of facility director
87-3-1	#3B	more clearly defines role of human rights committee
87-3-3	#9B	update of fire alarm procedure
87-4-5	#17B	copy of nutritional assessment is required by Licensure be attached to annual IDT meeting report
87-5-4	#8A	some drugs were no longer used and others were added
87-5-7	#3D	new forms were required as a result of redoing floor charts]

[Section 4 is revised as follows:

D—Eastern State Hospital

D-1		"Abuse of Patients by Hospital Employee" policy is adopted to include the phrase "or intimidating a patient or encouraging a patient to do harm to self or others," under the definition of Verbal Abuse. Additionally, "Neglect" has been removed from this policy as an example of patient abuse.
D-1		"Neglect to Preserve Patient's Health, Safety and Welfare" more clearly explains the forms neglect may take.
D-1		"Employee Recognition Program" is adopted to allow for recognition of all full time staff; to allow for re-nomination of previous winners; and to increase the committee membership.
D-1		"Posting of Vacant Positions"—locations of posting are changed.
D-2		"Posting of Vacant Positions"—locations of posting are changed.]

[Section 5 is revised as follows:

5(E)—Central State Hospital

(1)	E1	Sec. HH #4.40	This policy is adopted to utilize a discharge checklist (form attached to policy)
(2)	E1	Sec. HH	A new policy for a new training program on medications
(3)	E1	Sec. R #13	A new procedure for requesting canteen books for indigent patients
(4)	E1	Sec. CC #2	This is a new policy reflecting Central State Hospital requirements for CPR training
(5)	E1	Sec. A #1	This is a revision to reflect the present Board of Governors
(6)	E1	Sec. D #1	The Clinical Staff Bylaws have been revised to reflect changes in Article VIII and Article IX concerning committees

(7) E1 Section: X "Personnel"

No: 3, 7, 9, 10, 12, 14, 15, 16

These policies have been adopted to reflect recent changes in personnel.]

[Section 6 is revised as follows:

F—Volume 29—Western State Hospital

The following are adopted:

- the job specifications of the Director of Recreation Therapy, and of the Institutional Recreational Leader.
- policies #1, #3, #4, and #9
- P16—policy on protecting patients' health during activities in hot weather.
- description of the interaction between Recreation Therapy Service and Acute Psychiatric Service, Psychiatric Rehabilitation Service, Learning and Rehabilitation Service, Extended Care Service, Community Resources.

F-16—Western State Hospital

A New Disaster Manual is adopted because of new equipment in the hospital, departmental policy changes, new assignments of staff, ward changes, and other minor changes in the hospital.

F-28—Western State Hospital

A new Safety Manual is adopted because of new equipment the hospital, departmental policy changes, new assignment of staff, ward changes, and other minor hospital changes.

F-26—Western State Hospital

A new organizational chart is adopted to reflect changes in Hospital personnel.

— Section II, #25—An updated list of drugs available in the Western State Hospital Pharmacy is adopted.

— Section X—delete all information pertaining to Comprehensive Care Center Replacement Program except Policy I. Insert new information on drug replacement.

— Section V—Adopt an updated list of authorized prescribers for Western State Hospital Pharmacy.

F-32—Western State Hospital

A new policy is adopted for a new program of employee health care adopted at Western State Hospital, involving health assessment, PPD Skin Test, Flu vaccine, and Hepatitis B Immunizations.

F-5—Western State Hospital

#II—revised policy adopted to involved nursing service in informing patients of their rights

#VI—revised policy adopted on responsibilities of patient advocate to involve nursing service]

[Section 9 is revised as follows:

Facility Code—Volta I
Volume—#1
Section—Program Operation
Page Title—Volta Program

The third paragraph was rewritten to include "small group" which had been inadvertently omitted.]

[Section 10 is revised as follows:

J5—Kentucky Correctional Psychiatric Center

A new version of the Security Department Policies and Procedures is submitted to align policies with Joint Commission on Hospital Accreditation standards, to accommodate new personnel, a new laundry room, a new cleaning staff, to help prevent medication errors, and new security measures relating to medicine, incoming mail, the bullpen doors, shakedowns. etc.

J5—Kentucky Correctional Psychiatric Center

J5/A-1	Section F added to explain why attendance in inclement weather is necessary
J5/A-8	Section G clarifies where double space parking is permitted.
J5/A-9	Section E wording change
J5/A-10	Section D—"quarterly review" is changed to "biennial review"
J5/A-11	Section D—added statement specifying how employee can see personnel files
J5/A-12	section added to show quantity of clothing provided to officers
J5/A-13	employees may not leave keys in vehicles
J5/A-14	restrictions placed on incoming calls for patients
J5/A-17	changes responsibility from Command Post to Shift Supervisor
J5/A-18	clarifies that these duties only apply in absence of supervisor only work related material may be read in command post insures confidentiality of materials
J5/A-19	revises whole policy for specific details in relation to contraband
J5/A-20	changes from two (2) officers to one (1) for outside recreation
J5/A-21	changes to allow new duties all officers have cuff keys
J5/A-22	new policy—more detailed instructions on duties of Desk Officer
J5/A-23	omit "key" from policy
J5/A-24	change wording on calling in assistance—insure balance of employee coverage on all days requires documentation of incidents
J5/A-25	change to provide keys to recreation leader allow more organized assembly of patients
J5/A-26	changes time for assembly of patients
J5/A-27	one (1) officer to legal library with patients patient assembly in five (5) minutes instead of fifteen (15) minutes
J5/A-29	revise to provide precise details for admissions officer
J5/A-31	patients locked in room for patient count
J5/A-32	Kentucky Correctional Psychiatric Center has authority to lock evidence in file
J5/A-33	fire and safety coordinator has to make report
J5/A-36	revised to clarify directions specify time and date
J5/A-37	lock patients in living units during limited visibility
J5/A-39	engineering department is called during power loss
J5/A-40	control personnel go to Unit C in severe weather
J5/A-41	all officers have keys according to new policy

J5/A-44 This policy was written to clarify the procedure for changing shifts or days off, since many requests for change of shifts are received

J5/B-3 officers responsible for documentation

J5/B-8 refers to policy on contraband
clarifies reason for search and shakedown

J5/B-9
to
J5/B-24 revisions deal with patient rights, patient treatment, patient mail, etc.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, CHR 1-E, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild, R.N., Director, Division of Institutional Care
(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: 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:
(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 OR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of skilled nursing facilities and the services to be provided by skilled nursing facilities.

Section 1. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 2. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(3) "Facility" means a skilled nursing facility.
(4) "License" means an authorization issued by the Board for the purpose of operating a skilled nursing facility and offering skilled nursing services.
(5) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.
(6) "Speech pathologist" means a person who:
(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or
(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a

person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.

(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.

(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dieticians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in
cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis

with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) [(8)] Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. [All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter.] No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing inservice education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subparagraph 7a of Section 3(8)(d) may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical

records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for non-professional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) [(9)] Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. The physician's orders for medication, diet, and therapeutic services. These shall be dated and signed by the physician.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the ninetieth day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has e pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaulation pursuant to Section 4(1)(b). The patient's attending physician shall be notified of stop order

policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

5. Communicable diseases.

a. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology

services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: Patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an ap-

proved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Cabinet for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.]

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or beding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

C. HERNANDEZ, M.D., M.P.H., Commissioner
THOMAS D. DUNCAN, Vice Chairman
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 1, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the CHR Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All facilities with skilled nursing beds.

(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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. New requirements for TB testing are being promulgated in a separate regulation. The Secretary of CHR has transferred responsibility for enforcement of the Food Service Code to a different division.

(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. These are licensure regulations. All services are required to meet the same standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of personal care homes and the services to be provided by personal care homes.

Section 1. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means a person who:

(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator must: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.

(4) "Ambulatory" means able to walk without assistance.

(5) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(6) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.

(7) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance.

(8) "Nonambulatory" means unable to walk without assistance.

(9) "Nonmobile" means unable to move from place to place.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(12) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(13) "Residential care" means services which include but are not limited to: room accomodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.

(14) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) No personal care home may care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(6) Transfer procedures and agreements.

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician, and/or appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) [(7)] Personnel.

(a) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(b) All employees must be of an age in conformity with state laws.

(c) [All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter.] Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(d) All dietary employees must wear hairnets.

(e) Inservice training. All personal care home employees shall receive inservice training to correspond with the duties of their respective jobs. Documentation of inservice training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. Inservice training shall include but not be limited to the following:

1. Policies of the facility in regard to the performance of their duties;
2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;

7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.
(f) Staffing requirements.
1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this regulation.
2. If the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.
3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):
a. Recordkeeping;
b. Basic health and health related services; and
c. Activity services.
4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.
5. One (1) attendant shall be awake and on duty on each floor in the facility at all times.
(9) [(8)] Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:
(a) Identification information, including:
1. Resident's name;
2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
3. Marital status;
4. Birthdate;
5. Age;
6. Sex;
7. Home address;
8. Religion and personal clergyman, if any (with consent of resident);
9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
10. Next of kin and/or responsible person, address and telephone number;
11. Date of admission and discharge;
12. In the event of transfer, a copy of the summary of resident's records; and
13. Monthly recording of the resident's weight.
(b) If admitted from another facility a discharge summary or transfer summary.
(c) Admitting medical evaluation.
(d) Physician's report on annual medical evaluation of the resident.
(e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.
(f) Physician orders for medication or therapeutic services.
(g) Nurses' or staff notes indicating changes in resident's condition as they occur.
(h) Reports of accidents or acute illnesses of any resident.
(i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.
(j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initialed by the personnel rendering treatment or administering medication.
(k) Reports of the use of physical restraints, the procedures used, and the checks and releases of physical restraints.
(l) A record of resident's discharge destination.
(10) [(9)] Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:
(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.
(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician. Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.
(c) If orders are received by telephone from a physician, the order shall be recorded on the individual's medical record and signed by the physician within fourteen (14) days.
(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.
(e) Controlled substances. No home shall keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count

once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with KRS 218A.230, or CFR 21-1307.21, or sent by registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(f) All medicines must be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration must be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use must be stored separately from those administered by mouth and injection. Provisions must also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment, the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints or protective devices. No form of restraints or protective devices shall be used except under written orders of the attending physician.

1. Protective devices. Protective devices may be used to protect the resident from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the resident the greatest possible degree of mobility. In no case shall a locking device be used.

2. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the resident's record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

3. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(i) Special purpose areas for the protection or confinement of a resident shall not be permitted unless approved in writing by the Division of Licensure and Regulation of the Cabinet of Human Resources with specification of use of the area.

(j) Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

(k) Communicable diseases.

1. No personal care home shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

2. If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. All personal care homes shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. All personal care homes shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necesary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building and including the sidewalk,

steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the designated person responsible for food services is not a qualified dietitian or nutritionist, consultation by a qualified dietitian or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water must be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Cabinet for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.]

(3) Personal care services. All personal care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.

(4) Activity services.

(a) All personal care homes shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.

(b) All personal care homes shall meet the following requirements relating to the provision of activity services:

1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)

2. There shall be a planned activity period each day. The schedule shall be current and posted.

3. The program shall be planned for group and individual activities, both within and outside of the facility.

4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.

5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

6. The facility shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the residents.

C. HERNANDEZ, M.D., M.P.H., Commissioner
THOMAS D. DUNCAN, Vice Chairman
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 1, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the CHR, Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All facilities with personal care beds.

(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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. New requirements for TB testing are being promulgated in a separate regulation. The Secretary of CHR has transferred responsibility for enforcement of the Food Service Code to a different division.

(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. These are licensure regulations. All services are required to meet the same standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:048. Operations and services; nursing homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of existing nursing homes and the services to be provided by existing nursing homes. This regulation does not address the establishment of new nursing homes.

Section 1. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Facility" means a nursing home facility.

(5) "License" means an authorization issued by the Board for the purpose of operating a nursing home and offering nursing home services.

(6) "PRN medications" means medications administered as needed.

(7) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) [(9)] Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nurs-

ing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subparagraph 9a of Section 3(9)(c) may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. [All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter.] No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) [(10)] Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the sixtieth day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:
a. Service in speech pathology or audiology;
b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;
c. Determination and recommendation of appropriate speech and hearing services.
3. Occupational therapy services which include:
a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;
b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.
(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.
(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.
(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.
(5) Pharmaceutical services.
(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.
(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.
(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.
(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:
1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.
2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.
3. Provisions shall be made for emergency withdrawal of medications from the drug supply.
(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.
(f) Medication services.
1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.
2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.
a. The nursing station shall have readily available items necessary for the proper administration of medications.
b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.
c. Medications prescribed for one (1) patient shall not be administered to any other patient.
d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.
e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.
f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).
3. Labeling and storing medications.
a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.
b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.
c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.
d. Medications no longer in use shall be disposed of or

destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

6. Communicable diseases.

a. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment

Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Department for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.]

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. .Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 1, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the CHR Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: All facilities with nursing home beds.

(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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. New requirements for TB testing are being promulgated in a separate regulation. The Secretary of CHR has transferred responsibility for enforcement of the Food Service Code to a different division.

(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. These are licensure regulations. All services are required to meet the same standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board

902 KAR 20:051. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of intermediate care facilities and the services to be provided by intermediate care facilities.

Section 1. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Facility" means an intermediate care facility.

(5) "License" means an authorization issued by the Board for the purpose of operating an intermediate care facility and offering intermediate care services.

(6) "PRN medications" means medications administered as needed.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Department for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of

daily living. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physicial examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) [(9)] Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social 902 KAR 20:051-4

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have com-

pleted a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. [All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter.] No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) [(10)] Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;
2. Walkers;
3. Bedside rails;
4. Bedpans and urinals (permanent or disposable);
5. Emesis basins and wash basins (permanent or disposable);
6. Footstools;
7. Bedside commodes;
8. Foot cradles;
9. Foot boards;
10. Under-the-mattress bed boards;
11. Trapeze frames;
12. Transfer board; and
13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Communicable diseases.

1. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

2. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints or protective devices.

1. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care.

2. No form of restraints or protective devices shall be used except upon written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication

reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover,

two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left-over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). [The Division for Licensing and Regulation, Office of the Inspector General, Cabinet for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.]

Section 5. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

C. HERNANDEZ, M.D., M.P.H., Commissioner
THOMAS D. DUNCAN, Vice Chairman
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 1, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the CHR Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther
(1) Type and number of entities affected: All facilities with intermediate care beds
(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: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. New requirements for TB testing are being promulgated in a separate regulation. The Secretary of CHR has transferred responsibility for enforcement of the Food Service Code to a different division.
(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. These are licensure standards. All services are required to meet the same requirements.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:130. Appeals.

RELATES TO: KRS 341.440, *341.450(2)*
PURUSANT TO: KRS 13A.100, 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 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, or if other circumstances warrant.

(e) 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 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, *the requesting party shall have a period of ten (10) days from the date of mailing of the requested tapes by the commission within which to file written argument. Opposing party's response shall be due seven (7) days thereafter. Written argument shall be considered filed when delivered to a representative of the commission or division, or deposited in the mail, as indicated by the postmark thereon.* [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 set-

ting 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 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 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) 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.

(c) All requests under this subsection must be filed within ten (10) days of the mailing date of the notice of appeal receipt.

Section 7. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the Provisions of KRS 341.450(2).

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984, at 9 a.m., in the Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing: 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: Dorman Harrod

(1) Type and number of entities affected: Appellants to UI Commission; hundreds 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:

(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: 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 pro-

posed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All appellants to be treated equally.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Research and Planning
(Proposed Amendment)

903 KAR 6:040. Job Training Partnership Act.

RELATES TO: KRS 194.030(9)
PURSUANT TO: KRS 13A.100, 194.050(1)
NECESSITY AND FUNCTION: Public Law 97-300, the Job Training Partnership Act authorizes the states to implement a job training 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 Kentucky Job Training Program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the Job Training Program as authorized by Public Law 97-300 and as regulated in 20 CFR Parts 626 through 638, the following CFR, Public Law and Conference Report are adopted by reference:

(1) Title 20 Code of Federal Regulations (CFR), Parts 626 through 638, dated March 15, 1983, which contains regulations regarding the implementation of the Job Training Partnership Act (JTPA) and includes operational procedures for: determining eligibility of grant recipients and funding; preparing the Governor's Coordination and Special Services Plan; involving the State Job Training Coordinating Council; implementing interstate JTPA agreements; distribution of state funds; ensuring state education coordination and awarding grants; implementing training programs for older individuals; awarding state incentive grants; designating JTPA service delivery areas (SDA) and private industry councils; selection of SDA grant recipients; preparing, reviewing and approving job training plans; prohibiting use of public service employment for JTPA purposes; determining eligiblity for need-based payments and benefits and assessing working conditions; ensuring compliance in the areas of grant payments, program income, insurance, procurement, management systems, reporting and recordkeeping, budgetary classifications and limitations, matching funds, property management standards, audits, program oversight, sanctions for Act violations, program closeout and performance standards; filing requests for and conducting grievance hearings; handling of administrative, civil and criminal complaints and reports of fraud, abuse and other criminal activity; and implementing summer youth employment and training programs, Native American employment and training programs, migrant and seasonal farmworker programs and veterans employment programs.

(2) Public Law 97-300, the Job Training Partnership Act of 1982, which concerns the state and local service delivery system and general program and administrative issues including: the authority and program requirements of the governor, state job training coordinating councils, private industry councils and chief elected officials; processes for designating local service delivery areas; preparing local plans and selecting local service providers; development of performance standards and procedures for implementation; fiscal control; monitoring and recordkeeping; training programs for disadvantaged youth and adults, including the areas regarding funding and eligibility and summer youth training and job programs; implementing training and employment aid program for dislocated workers including consultation with private industry councils; funding and implementation of employment and training programs for Native Americans, migrant workers and veterans; Job Corps; labor market information systems; functions of the National Commission for Employment Policy; and coordination between the Work Incentive Program and the job training delivery system.

(3) Job Training Partnership Act, Conference Report, issued September 28, 1982, which is a joint explanatory statement of the Committee of Conference on the Job Training Partnership Act which explains the action agreed upon by the House and Senate managers and expresses the intent of the Congress.

(4) Job Bank/MODS Bulletin No. 1, Reissue, dated September 14, 1984, which includes procedures for completing the ES-511, Application Card, as to whether a male applicant has registered with the Selective Service, if applicable, as is required for eligiblity under Job Training Partnership Act programs.

(5) On-the-Job Training Programs Procedures and Implementation, dated October 9, 1984, which includes a policy statement and procedures for developing OJT contracts and determining employer eligibility and occupational eligibility.

Section 2. In order to coordinate the Job Training Program and provide for uniform service to the public, the following plan and instructions are adopted by reference:

(1) Governor's Coordination and Special Services Plan, dated May 15, 1984 which contains applicant identifying information, program information for state and local agencies determined to have a direct interest in employment and training and human resource utilization within the state, priorities and criteria for state-supported programs, adjustments in performance standards, modification methods if major changes occur in labor market conditions, funding or other factors covered under the plan.

(2) Information and Instructions for a Request for Proposal (RFP), which includes procedures for the submission of a program request of funding for job training activities under the Job Training Partnership Act, including the purpose, objectives, approach and methodology, length of program, level of support, funding, matching, service providers, performance standards, proposal review outlines, JTPA cost classifications, cost principles for JTPA-funded activities, a list of service delivery areas, administrative entities and Department for Employment Services offices, submission instructions, application instructions and an application form.

Section 3. 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 service delivery area offices located throughout the state.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984, at 9 a.m., in the Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Office of the 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: Potentially all Kentucky employees, approximately 25,000 trainees per year.

(a) Direct and indirect costs or savings to those affected: indeterminable, dependent upon voluntary participation

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. No tiering provision in federal law.

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 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. *In addition, the value of otherwise countable real property (whether income producing or non-income producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.*

(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 *cash surrender* [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) Burial agreements (pre-paid burials or similar arrangements) and burial spaces, plots, or vaults are excluded from consideration as a countable resource without regard to value.

(7) [(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.

(8) [(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 *for any eligible group but eligible children in intact families who meet the AFDC income and resources requirements; the thirty (30) dollars and one-third (1/3) of the remainder exemption for qualifying families shall be treated in the same manner as for AFDC cases except that eligibility may not be extended based on a loss of this disregard.*

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	$192
2	2,700	225
3	3,200	267
4	3,900	325
5	4,600	383
6	5,200	433

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 *either* full-time *or part-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 *for any reason other than institutionalization*, both of whom are concurrently applying for or receiving MA only, income *and resources are* [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*; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section.* [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 *(for a reason other than institutionalization)* 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 *the month of* 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 *October 1,* [July 1,] 1984, applicable at the time of the next determination of eligibility for each applicant or recipient.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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: Approximtely 800 applicants/recipients of Medicaid (over four (4) years)

(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: $190,000-$215,000* (Costs)

2. Continuing costs or savings: Approximtely $50,000 will be added in costs each year for three (3) years.

3. Additional factors increasing or decreasing costs: Additional children will be added to the program for three (3) years.

(b) Reporting and paperwork requirements: NONE

(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: The eligible group being added for Medicaid coverage pursuant to 904 KAR 1:011 is expected to include a first year group of children totaling 1,250 with the number anticipated to increase by the same number each year for three (3) years. The total number of eligible children after four (4) years is estimated to be about 5,000. We roughly estimate that about 75% of these families will qualify for the 30 and 1/3 earning disregard, and that the averge disregard is about $60 per month per case. The disregard is expected to increase eligible children by 10%, at a per child cost of $42 per month. We thus anticipate the net effect for the children as follows: 125 additional eligible children at a cost of about $30,000 (in the first year due to phase-in), increasing to 500 eligible chilren at a cost of $250,000 by the end of the fourth year.

Other program changes are anticipated to cost the program about $160,000 to $185,000 per year. Using the above methodology and combining the amounts, we thus anticipate first year costs of between $190,000 and $215,000 with a cost range to increase to an estimate of between $410,000 and $435,000 by the end of four (4) years.

To avoid confusion, we wish to point out that for the additional eligible individuals being added to the program, the increased Medicaid costs are also shown in the cost impact analysis for 904 KAR 1:011, which is being amended to show the addition of the new eligible groups.

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 1:011. Technical eligibility requirements.

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(3) 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, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children in intact families (but not their parents) who meet the resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his/her first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth.

Section 2. The Medically Needy. Other individuals *(but not including children in intact families as shown in Section 1(7) of this regulation)*, meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions,

psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii).

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. To qualify for continuing eligibility in this situation, the family must have received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The nine (9) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the nine (9) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) [(9)] Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) [(10)] An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) [(11)] Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(14) [(12)] To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(15) [(13)] An individual may be determined eligible for

medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) [(14)] "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) [(15)] Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 6. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 7. Date of Implementation. The provisions of this regulation, as amended, shall be effective on October 1, 1984.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 13, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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 5,000 children in intact families (over a period of four (4) years); up to 10,000 newborn children in currently eligible AFDC and AFDC related MA only cases.

(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: $300,000 (Costs)*

2. Continuing costs or savings: First year costs plus $630,000 additional each year for three (3) additional years.*

3. Additional factors increasing or decreasing costs: Add approximately 1,250 children in intact families each year for three (3) additional years.

(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 com-

ments: *Assumes 1,250 children in intact families will become eligible each year for four (4) years, with first year costs reduced due to phase-in; no additional costs for deeming newborns eligible.

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

RELATES TO: KRS 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 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. 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 *Reimbursement Manual* [Payment System], revised *October* [July] 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 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) 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 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 waiver, 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 conventions, meetings, assemblies, conferences, 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 *for changes of ownership occurring before July 18, 1984*:

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

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

(c) Gain 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.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth in the Social Security Act (as amended by the Deficit Reduction Act of 1984) and shown herein for the revaluation of assets of skilled nursing and intermediate care facilities.

(a) The Social Security Act, Section 1861(v)(1)(O) (as published in the Commerce Clearing House Medicare/Medicaid Guide) specifies the following:

"(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of the date of the enactment of this subparagraph, (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner."

"(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984."

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title."

(b) The Social Security Act, Section 1902(a)(13) (as published in the Commerce Clearing House Medicare/Medicaid Guide) further specifies the following:

"(B) That the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O)."

(12) [(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.

(13) [(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.

(14) [(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.

(15) [(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).

(16) [(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).

(17) [(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.

(18) [(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).

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

*For a basic per diem of $26.99 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	—

*For a basic per diem of $56.99 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**

*For a basic per diem of $36.99 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.

(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) 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) 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.)

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after October 1, 1984.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR. Secretary

APPROVED BY AGENCY: October 5, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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 participating skilled nursing or intermediate 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:

1. First year: $700,000* (savings)
2. Continuing costs or savings: $1,500,000 (savings)
3. Additional factors increasing or decreasing costs: Full-year costs compared to phase-in 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: *The savings is cost containment rather than cost reduction (i.e., costs will not increase as much); and is based on the assumption that approximately 15 facilities that might have been expected to change ownership will either remain under the same ownership or, if a change is made, costs will not increase as a result.

Tiering:
Was tiering applied? No. Not applicable.

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

904 KAR 1:061. Payments for medical transportation.

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 medical transportation services.

Section 1. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate is the amount arrived at by combining the following component costs, as applicable:

(a) The base rate, which is set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 2. Commercial Transportation Vendors. (1) "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.

(2) The cabinet shall reimburse commercial transportation vendors at the normal passenger rate charged to the general public, except that the following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(a) The upper limit shall be the usual and customary charge up to a maximum of three dollars ($3) for trips of five (5) miles or less, one (1) way, loaded miles.

(b) The upper limit shall be the usual and customary charge up to a maximum of six dollars ($6) for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(c) The upper limit shall be the usual and customary charge up to a maximum of ten dollars ($10) for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(d) The upper limit shall be the usual and customary charge up to a maximum of fifteen dollars ($15) for trips of twenty-six (26) miles or over, one (1) way, loaded miles.

Section 3. Private Automobile Vendors: (1) "Private automobile vendor" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are non-certified or who have not chosen or been approved to participate in the Title XIX program, if willing to accept private automobile vendor rates.

(2) (a) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two dollars ($2) per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three dollars ($3) for the first passenger plus two dollars ($2) each for waiting time for additional eligible passengers.

(b) For round trips of five (5) to twenty-five (25) miles the rate shall be computed on the basis of a maximum allowable fee of five dollars ($5) for the first passenger plus two dollars ($2) each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid. Toll charges are reimbursable when incurred.

(3) "Maximum allowable fee" means that even though the rate when computed on the basis of twelve (12) cents per mile plus two dollars ($2) for waiting time would not equal the three dollars ($3) or five dollars ($5) allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in the above subsection (2) should be construed to require the cabinet to pay the amounts specified therein in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount will be paid.

(4) "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility. Waiting time is a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pick-up as though the client were in the vehicle; that is, the total reimbursable amount is computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in subsection (2) of this section.

Section 4. Non-Commercial Group Carriers: (1) "Non-commercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group. Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, mental health center, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Mental health centers providing bus or bus-type service for mental health center patients; and

(b) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(c) Other similar providers as identified by the cabinet.

(2) Reimbursement shall be based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

Section 5. Specialty Individual Carriers: (1) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for non-ambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, persons or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required would be a van or similar type vehicle with a lift for wheelchairs; and the service would be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance and/or guidance to the recipient when necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

(2) Specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(3) Program maximums are:

(a) Non-ambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit is *fifteen (15) dollars* [ten dollars ($10)] for the first patient plus *seven (7) dollars and fifty (50) cents* [five dollars ($5)] for each additional non-ambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added *seventy-five (75)* [fifty (50)] cents per mile per patient for miles the patient(s) is

transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit is *six (6) dollars* [four dollars ($4)] per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added *seventy-five (75)* [fifty (50)] cents per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b), above, mileage must be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage is allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles are not included when computing allowable reimbursement for mileage.

(4) Reimbursement is made at specialty individual carrier rates for the following types of recipients only:

(a) Non-ambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons and/or objects. The extent of disorientation must be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(5) The specialty carrier must obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's non-ambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification will not be paid.

Section 6. Specially authorized transportation services provided by ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 7. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the transportation provider computed in the usual manner.

Section 8. Limitations. Any reimbursement for medical transportation is contingent upon the recipient receiving the appropriate pre- or post-authorization for medical transportation as required by the cabinet.

Section 9. Implementation Date. The provisions of this regulation as amended shall be effective on October 1, 1984.

JACK F. WADDELL, Vice Chairman
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 25-30 specialty individual carriers.

(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: $125,000 (costs)
2. Continuing costs or savings: $125,000 (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: None

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 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. *The regulations contain federal supplementary policies, interpretations and implementing instructions for the Medical Assistance Program as authorized by Title XIX of the Social Security Act.*

(2) Federal "State Medicaid Manual," effective *October* [July] 1 1984. *The "State Medicaid Manual" contains federal interpretations and clarifications of policy relating to implementation of the Medical Assistance Program.*

(3) Federal action transmittals issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, 79-72, 79-98, 80-9, 80-59, 81-23, 81-33, 81-35, 82-1, 82-2, 82-20, 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, [and] 84-5, *and 84-10* effective *October* [July] 1, 1984. *Action transmittals contain federal instructions relating to implementation of the Medical Assistance Program.*

(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, *18-84,* 20-84, 23-84, 24-84, 25-84, [and] 26-84, *27-84, 29-84, 34-84, and 35-84,* effective *October* [July] 1, 1984. *Transmittal notices contain federal clarifications of policy relating to implementation of the Medical Assistance Program.*

(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 *October* [July] 1, 1984. *The Medicare and Medicaid Guide contains reprints of federal laws and regulations relating to the Medicare and Medicaid programs; reprints of Medicare/Medicaid related court decisions; Medicare principles of reimbursement; summaries of state plan characteristics; and other items of general information relating to the Medicare and Medicaid programs. Although the cabinet is bound by federal Medicaid law and regulations in the implementation of the Medical Assistance Program, the Guide is used principally as supplementary material for reimbursement issues in situations where the cabinet's vendor reimbursement system uses the Medicare cost principles in unaddressed areas.* [; and]

(6) State Medicaid Program policies and procedures manuals issued by the cabinet, *and which contain benefit descriptions and operating instructions used by agency staff and participating vendors in the provision of, and billing for, Medical Assistance benefits provided eligible program recipients,* 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 *October 1* [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 *October* [July] 1, 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: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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:

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: 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 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2),(3)
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with her/his spouse in the home of her/his parents is not deprived of parental support or care. A married child living in the home of her/his parents but divorced or legally separated from her/his spouse is deprived of parental support if she/he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his/her function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, forced separation of seven (7) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(3) Incapacity defined. Incapacity is any condition of mind or body which makes a parent physically or mentally unable to provide the necessities of life for his/her needy child. The condition must be anticipated to continue for at least thirty (30) days beyond the date of application and may be presumed to continue during a period in which the parent is undergoing diagnostic studies and/or evaluation of rehabilitation potential. Incapacity of the parent must prevent him/her from working in an occupation in which he/she previously engaged, or another job for which he/she is equipped and which is accessible in the county or community where he/she normally resides. If a job opportunity exists in the community or county, it shall be considered accessible regardless of its immediate availability. Scarcity of work does not establish incapacity unless there is a causal relationship between the parent's unemployment and actual physical or mental disability. Lack of paid work experience does not preclude the parent from being considered incapacitated.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(4) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(5) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program prior to or during the month of their nineteenth birthday. Full and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC. A child is considered in regular attendance in months in which he/she is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he/she has indicated an intention not to re-enter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he/she refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause. Participation in a strike shall not constitute good cause.

(2) Individuals exempt from WIN registration pursuant to 45 CFR 224.20(b) are as follows:

(a) An individual under age sixteen (16);

(b) A child age sixteen (16) to age eighteen (18), if enrolled as a full-time student; or to age nineteen (19), if a full-time student who meets the requirements set forth in Section 4 of this regulation;

(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

(e) An individual age sixty-five (65) or over;

(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;

(g) A parent or other relative who cares for a child under six (6), and who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(h) A person so far remote from a work incentive project that his/her effective participation is precluded;

(i) An individual who is employed not less than thirty (30) hours per week, in unsubsidized employment expected to last a minimum of thirty (30) days, except when there is a temporary break in such employment expected to last longer than ten (10) days;

(j) A woman who has been medically verified to be in the third trimester of pregnancy.

Section 8. Cooperation in Child Support Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his/her cooperation in child support activities pursuant to 45 CFR 232.12 and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) Pursuant to 45 CFR Part 232.40, the Cabinet for Human Resources will provide written notice to the applicant or recipient that he/she may claim good cause for refusing to cooperate.

(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticapted to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicants's/recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's/recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 9. Potential Entitlement for Other Programs. All applicants/recipients must apply for any statutory benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 10. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 11. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 12. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the

child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section *13.* [12.] Provisions of this regulation shall be effective *October 1, 1984* [January 1, 1984 except for the deletion of Section 12 of this regulation relative to photo-identification which shall be effective upon filing].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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: AFDC households that contain women in the third trimester of pregnancy.
(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:
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 is a federally mandated change.
(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. Provisions in this application are applied statewide.

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

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

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 205.200(2)
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 assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his/her eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance.* The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative *shall* [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 *six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; 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 *185* [150] percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.
(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. 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 *group* [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;

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

(g) *One (1) burial plot/space per family member;* [Other items/benefits mandated by federal regulation.]

(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/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 the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group,* 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 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)*(F)*[(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. *The ineligibility period shall be recalculated if any of the following circumstances occur:*

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) *and/or parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group* 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 *and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit,* as set forth in Section 5 of this regulation;

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

(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) *for a period not to exceed six (6) months within a given year;*

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

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in in-

stitutional 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);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group; and

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance.

(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 *dependent* child in full-time school attendance *for a period not to exceed six (6) months within a given year* [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 *and part-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. *The one-third (1/3) portion of* this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income. *The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence.* [unless he/she has not been a recipient for twelve (12) consecutive months] *These disregards shall be applied* in accordance with *45 CFR 233.20(a)(11)(i)(D) and* 45 CFR 233.20(a)(11)(ii)(B) *and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive monhs; and*

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

(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. *Income and resources of a stepparent living in the home with a dependent child and/or parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:*

(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 *for full-time employment* [of the stepparent who is employed full time] *and/*or the first forty (40) dollars of the gross earned income *for part-time employment* [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 *or parent(s)/legal guardian(s) of a minor parent/legal guardian* 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 *or parent(s)/legal guardian(s) of a minor parent/legal guardian* as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent *or parent(s)/legal guardian(s) of a minor parent/legal guardian* 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 *and/or parent(s)/legal guardian(s) of a minor parent/legal guardian* for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent *and/or parent(s)/legal guardian(s) of a minor parent/legal guardian* receiving Supplemental Security Income (SSI) under Title XVI.

(2) Resources. Resources which belong solely to the stepparent *and/or parent(s)/legal guardian(s) of a minor parent/legal guardian* are not considered in determining eligibility of the [natural] parent or the assistance group.

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. *If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs.* 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 *(EITC).* In the case of an applicant or recipient of AFDC, *EITC payments shall be considered as earned income when received* [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
2 Persons	$170
3 Persons	$197
4 Persons	$246
5 Persons	$288
6 Persons	$325
7 or more Persons	$362

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 Educational 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) Overpayments may be waived for inactive non-fraud cases involving less than thirty-five (35) dollars in overpayment.

(5) [(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.

(6) [(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 *October 1, 1984* [July 1, 1984].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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: Roy Butler

(1) Type and number of entities affected: These changes may affect the entire pool of AFDC eligible households which total over 55,000 at this time.

(a) Direct and indirect costs or savings to those affected:

1. First year: Changes which will result from these provisions will vary depending on the AFDC family's composition and circumstances. Some families will receive higher benefits; others may be terminated or receive reduced benefits.

2. Continuing costs or savings: Unknown at this time.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: All households will be required to complete forms as a result of these provisions during the initial implementation. The overall impact should be minimal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal effect on administration. Overall, total AFDC benefits are projected to decrease by approximately $1.2 million.

2. Continuing costs or savings: Unknown at this time.

3. Additional factors increasing or decreasing costs: Rise or fall in FDC caseload.

(b) Reporting and paperwork requirements: All caseloads will be reviewed to determine if changes affect eligiblity during initial implementation.

(3) Assessment of anticipated effect on state and local revenues: No significant impact.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These are federally mandated changes, therefore must be implemented.

(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. Provisions included in the regulation are applied uniformly statewide.

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

904 KAR 2:020. Child support.

RELATES TO: KRS 205.795
PURSUANT TO: KRS *205.795* [13.082]
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. The cabinet is required by the Social Security Act to make efforts to establish paternity and/or secure support from absent parents of children receiving Aid to Families with Dependent Children, hereinafter referred to as AFDC, as a result of desertion or abandonment or due to birth out-of-wedlock and for non-AFDC children on application. KRS 205.795 empowers the secretary to adopt regulations pertaining to the administration of the Child Support Program. This regulation specifies the procedure for the operation of the program.

Section 1. Compliance with Federal Regulations. The cabinet shall administer the Kentucky Child Support Program in accordance with Title IV-D of the Social Security Act and Title 45 CFR Sections 301, 302, 303, 304, and 305.

Section 2. Relation to Title IV-A Program. The cabinet shall administer the Kentucky Child Support Program, as the program relates to Title IV-A recipients, in accordance with regulations cited in Section 1 above and Title 45 CFR Sections 205, 232, 233, 234, and 235.

Section 3. Definitions. (1) "Cabinet" shall mean the Cabinet for Human Resources.
(2) "Secretary" shall mean Secretary of the Cabinet for Human Resources.
(3) "Court order" shall mean any judgment, decree, or order of the courts of this or any other state.
(4) "Dependent child" or "needy dependent child" shall mean any person under age eighteen (18) who is not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States and is a recipient of or an applicant for public assistance or who has applied for child support services in accordance with Title IV-D of the Social Security Act.
(5) "Duty of support" shall mean any obligation of support imposed or imposable by law or by court order, decree, or judgment whether interlocutory or final, and includes the duty to pay arrearages of support past due.
(6) "Parent" shall mean the natural or adoptive parent of an AFDC or non-AFDC child and includes the father of a child born out-of-wedlock if paternity has been established in a judicial proceeding or in any manner consistent with the laws of this state.
(7) "AFDC recipient" shall mean a child or caretaker relative who is receiving AFDC as prescribed by Title IV-A of the Social Security Act.
(8) "Cooperation" shall mean the act of providing to the IV-D agency or the responsible local official any verbal or written information or documentation needed by the IV-D agency or local official for child support activities, and otherwise complying with the requirements of the Child Support Program.
(9) "Good cause" shall mean that the AFDC recipient has a valid and acceptable reason (as determined by the cabinet) for failing to cooperate in activities related to the Child Support Program.
(10) "Non-AFDC recipient" shall mean any child or family who does not receive AFDC, but does receive child support services based on an application filed with the IV-D agency or with a responsible local official who has entered into a written agreement with the IV-D agency.
(11) "Responsible local official" shall mean the elected or appointed official in a political subdivision who is legally responsible for law enforcement activities and has entered into a written agreement with the IV-D agency.
(12) "Title IV-D agency" shall mean the organizational unit in the state that has responsibility for administering the Title IV-D (Child Support) Program.
(13) "Title IV-A agency" shall mean the organizational unit in the state that has responsiblity for administering the Title IV-A (AFDC) program.
(14) "Paternity blood tests" shall mean those tests used in contested paternity actions including, but not limited to, ABO and Human Leucocyte Antigen (HLA) tests administered by qualified laboratories or medical personnel.

Section 4. Initiation of Child Support Action. Child support activity shall be initiated upon referral of forms from the Title IV-A agency agency or upon application of a non-AFDC recipient to the IV-D agency or its authorized representative.

Section 5. Safeguarding Information. Pursuant to 45 CFR 302.18 and consistent with KRS 205.175 and 205.990, the cabinet will disclose information regarding recipients of child support services only to public officials or the recognized persons, such as private attorneys, acting on behalf of the recipients of child support services, who require the information for their official duties and to other persons and agencies involved with the administration of the Child Support Program or other federally assisted programs which provide cash benefits or services to needy individuals. Pursuant to 45 CFR 302.18(b), the IV-D agency may not disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient.

Section 6. Establishing Paternity. In establishing paternity for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to paternity.

Section 7. Securing and Enforcing Child Support. In securing or enforcing child support for children in the Child Support Program pursuant to the Social Security Act, the cabinet may utilize any of the provisions which are contained in Kentucky Revised Statutes related to child support.

Section 8. Assignment of Child Support to IV-D Agency. (1) By accepting public assistance for or on behalf of a needy dependent child, an AFDC recipient assigns to the cabinet the right to all past due and future child support including any voluntary contributions made by the absent parent. Any support income received by AFDC recipients must be forwarded to the cabinet no later than the tenth (10th) day of the month following receipt.
(2) Non-AFDC recipients may assign their support rights to the cabinet, but these recipients are not required to make such an assignment.

Section 9. Agency Receipt of Support Payments. (1) When the support payment is made payable to the cabinet, money received is credited to the account of the noncustodial or absent parent.

(2) If both the amount of the current month's child support collection and the court ordered amount equal or exceed the AFDC grant, the IV-D agency will notify the IV-A agency, as required by 45 CFR 302.32.

Section 10. Non-AFDC Recipients. The IV-D agency will provide all services to individuals who are not recipients of AFDC benefits as provided in 45 CFR 302.33(a). The services will be provided without cost to the applicant except as is provided in 42 USC 453(e)(2) and 463 regarding the federal parent locator service. Additionally, any other fee which must be paid to the federal government for services will be collected by the IV-D agency from the applicant.

Section 11. Cooperative Agreements. Pursuant to 45 CFR 302.34, 42 USC 654(7) and KRS 205.800, all eligible local officials may enter into a written agreement with the cabinet to cooperate in activities relative to the Child Support Program when approved by the cabinet. When officials enter into an agreement with the cabinet, federal financial participation (FFP) for child support activities will be provided pursuant to federal laws and regulations when billing is submitted in accordance with procedures established by the cabinet. If no agreement is executed, referrals for child support activities may be made to local law enforcement officials in accordance with the official's statutory obligations, but the officials will not be eligible for reimbursement as specified above.

Section 12. Distribution of Child Support Payments. Distribution of child support payments received by the cabinet are made in accordance with 45 CFR 302.32, 302.38, and 302.51. *The first fifty (50) dollars of all child support collected in a month by the cabinet for an AFDC assistance unit which represents the current month's support obligation shall be returned to the assistance unit. Rights related to hearings as written in 904 KAR 2:055 do not apply to payment of the pass-through of support collected by the IV-D agency.*

Section 13. Good Cause for Refusal to Cooperate. (1) The IV-D agency or its authorized representative must immediately notify the IV-A agency at such time as the AFDC recipient refuses to cooperate in child support enforcement efforts. If the IV-A agency should determine, pursuant to IV-A laws and regulations, that the recipient has a good cause for failing to cooperate and that pursuit of child support action would be detrimental to the best interests of the child, the IV-D agency will not pursue any action in the child's behalf.

(2) If the IV-A agency determines that the recipient has good cause for not cooperating but that additional child support action would not harm the child, the IV-D agency may proceed in the name of the cabinet for the use of and in behalf of the minor dependent child pursuant to federal laws and regulations.

Section 14. Parent Locator Service. The cabinet shall use available resources to locate absent parents for children in the Child Support Program in accordance with Kentucky Revised Statutes and applicable federal laws and regulations.

Section 15. Paternity Blood Testing. Pursuant to 45 CFR 303.5(c) the IV-D agency shall identify laboratories within the state which perform legally and medically acceptable blood tests, including ABO and HLA tests, which tend to include or exclude an alleged father in paternity proceedings under KRS Chapter 406. The IV-D agency shall make a list of such laboratories available upon request. In addition, the cabinet shall provide a list of all such laboratories to the Kentucky Bar Association and to the Administrative Office of the Courts for distribution to appropriate agencies and individuals on an annual basis.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Deprtment for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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: AFDC households for which the Cabinet is collecting child support. This is approximately 5,500 cases monthly.

(a) Direct and indirect costs or savings to those affected: All 5,500 cases will receive a monthly payment up to $50.

1. First year: It has been estimated that the total refund to AFDC recipients will be approximately $2.8 million annually.

2. Continuing costs or savings: Unknown

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: The Cabinet will be returning approximately 5,500 checks a month, incurring costs for postage, envelopes and forms.

(a) Direct and indirect costs or savings:

1. First year: The money being returned to AFDC recipients is currently retained to reimburse the state/federal government for AFDC grants paid to the recipients. The state's share of lost revenue will exceed $800,000 annually. Additional administrative costs are estimated to be less than $100,000 annually.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Rise or fall in collection activity.

(b) Reporting and paperwork requirements: Most activity will be automated. Some new forms will be developed and periodic reports will be compiled.

(3) Assessment of anticipated effect on state and local revenues: The overall impact on the state is felt to be insignificant.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a federally mandated requirement and implemented statewide.

(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. Provisions included in this regulation are applied uniformly statewide.

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 *October* [July] 1, 1984. *The Manual of Operations provides operating instructions, procedural detail, and technical clarification for use of the department's field staff in implementing programs, under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; and medical assistance.*

(2) Department for Social Insurance Manual of Forms, effective *October* [July] 1, 1984. *The Manual of Forms provides forms with instructions for completion, usage, distribution and files maintenance for use of the department's field staff in implementing programs under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; medical assistance; and the food stamp program.* [; and]

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective May 16, 1984. *Part 16, Procedures of the Departmental Grant Appeals Board, provides requirements and procedures applicable to resolution of certain disputes arising under several assistance programs funded by the United States Department of Health and Human Services. Part 74, Administration of Grants, establishes uniform requirements for the administration of grants provided under the authority of the United States Department of Health and Human Services, and principles for determining costs applicable to activities assisted by Department of Health and Human Services grants. Part 95, General Administration—Grant Programs (Public Assistance and Medical Assistance), establishes requirements of the United States Department of Health and Human Services for various administrative matters relating to grant programs, including time limits for states to file claims, cost allocation plans, and conditions for federal financial participation for automatic data processing equipment and services.*

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: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, CHR 1-E, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing: R. 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, *which set forth the federal requirements and guidelines for the administration of the Aid to Families with Dependent Children Program,* [and interim final regulations at 45 CFR Parts 200-299,] effective *October 1* [May 16], 1984; and

(2) Federal [aid to families with dependent children] action transmittals, *which provide operating instructions, procedural detail and technical clarification for use by the department's staff in administering the Aid to Families with Dependent Children Program,* 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, 84-7, 84-8, [and] 84-9, *84-13, and 84-16,* effective *October* [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, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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
(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,] *which set forth the requirements and guidelines for the administration of the Child Support Program,* effective *October* [July] 1, 1984;

(2) Federal Office of Child Support Enforcement Action Transmittals, *which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations,* 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, *and 84-05,* effective *October 1* [May 16], 1984;

(3) Department for Social Insurance Child Support Manual of Procedures, *which provides operational instructions and procedural detail for the implementation of the child support enforcement program,* effective *October* [July] 1, 1984;

(4) Department for Social Insurance Child Support System Handbook, *which provides systems and data processing instructions for the implementation of the child support enforcement program,* effective May 16, 1984; and

(5) Department for Social Insurance Child Support Action Memorandums, *which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program,* 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,] 84-10, 84-11, 84-16, 84-18, 84-19, 84-20, [and] 84-22, *84-29, 84-34, and 84-36,* effective *October* [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, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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 2:180. Incorporation by reference of materials relating to the Home Energy Assistance 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 program to provide assistance for eligible low income households within the Commonwealth of Kentucky, to help meet the costs of home energy, in accordance with the provisions of P.L. 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981). This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Home Energy Assistance Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the home energy 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 Materials. The following materials are hereby incorporated by reference effective on the date shown:

(1) Federal energy regulations at 45 CFR Part 96, and interim final regulations at 45 CFR Part 96, *which set forth the federal requirements and guidelines for the administration of the Home Energy Assistance Program,* effective *October 1* [May 16], 1984;

(2) Federal low income home energy assistance information memorandums, *which set forth the federal requirements and guidelines for the administration of the Home Energy Assistance Program,* as follows: SSA-IM-83-01, 83-02, 83-05, [83-06,] 83-07, 83-09, 84-6, [and] 84-14, *84-22, and 84-23,* effective *October 1* [May 16], 1984;

(3) Federal low income home energy assistance information action transmittal, *which sets forth the federal requirements and guidelines for the administration of the Home Energy Assistance Program,* as follows: SSA-AT-83-02, effective May 16, 1984.

Section 3. All documents included by reference herein may be reviewed during normal working hours at 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: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Approximately 300,000 recipients of the home energy assistance program (HEAP).

(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 by reference materials already used in the implementation of HEAP. Therefore, there is no cost impact.

Tiering:
Was tiering applied? No. Not applicable for HEAP regulations.

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

904 KAR 2:190. Incorporation by reference of materials relating to the Refugee Assistance Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Refugee Assistance Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Refugee 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 Materials. The following materials are hereby incorporated by reference, effective on the date shown:

(1) Federal regulations at 45 CFR Parts 400-401, *which set forth the federal requirements and guidelines for the administration of the Refugee Assistance Program,* [and interim final regulations at 45 CFR Parts 400-401,] effective May 1, 1984;

(2) Federal Office of Refugee Resettlement action transmittals *which set forth the federal requirements and guidelines for the administration of the Refugee Assistance Program,* as follows: ORR-AT-80-5, 80-6, 80-7, 81-1, 82-3, 83-1, 83-2, 83-6, [and] 83-6A, *and 84-2,* effective *October 1* [May 16], 1984; and

(3) Memorandum dated March 1, 1984 to State Agency Administrators of Refugee Resettlement Program and Cuban/Haitian Entrant Program, *which set forth program goals, standards, and priorities in the Refugee Assistance Program,* effective May 16, 1984.

Section 3. All documents included by reference herein may be reviewed during normal working hours at the Division of Mangement and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing

on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 200 recipients of refugee assistance.
(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 by reference materials already used in the implementation of the refugee assistance program. Therefore, there is no cost impact.

Tiering:
Was tiering applied? No. Not applicable for refugee assistance 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 *October* [July] 1, 1984. *The manual contains operational instructions, procedures, and forms used by the cabinet in the implementation of the collections program.*

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: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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 Stamp, 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 *250, 251 and 271* [270]-282, *which set forth the federal requirements and guidelines for the administration of the Food Stamp Program* [and interim final regulations at 7 CFR Parts 251, 270-282], effective *October* [July] 1, 1984;

(2) Department for Social Insurance Food Stamp Handbook, *which provides operating instructions, procedural detail and technical clarification for use by the department's field staff in administering the Food Stamp Program,* effective *October* [July] 1, 1984; and

(3) Federal food stamp regional letters, *which set forth federal clarification of federal food stamp regulations,* 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, 84-36, 84-37, 84-38, [and] 84-39, *84-40, 84-41, 84-42, 84-43, 84-45, 84-46, and 84-47* effective *October* [July] 1, 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: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R 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 households applying for or receiving food stamps.
(a) Direct and indirect costs or savings to those affected: Not significant
1. First year: Minimal
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.
(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: Insignificant
(3) Assessment of anticipated effect on state and local revenues: No significant impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes are in compliance with federal requirements.
(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 to these changes as federal requirements mandate uniform statewide implementation/application of policies.

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 *October 3* [August 13], 1984. 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-servicemembers, 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 September 5, 1984. 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, interstate 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 August 1, 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 *September 3* [June 8], 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.

(6) Unemployment Insurance Director's Office Manual issued November 18, 1983. This manual includes procedures for operating the Fraud Investigations and Internal Security Unit such as procedures for: administering the unit; detecting fraud; prosecuting fraud cases; closing out fraud cases; preventing fraud; maintaining internal security; and conducting other investigations.

Section 2. Summary of Amendment. (1) Unemployment Insurance Local Office Manual.

(a) *Chapter 2000, Initial Claims, Sections 2010, 2020 and 2170, strike pages 3 through 8, 29 and 30, all dated 7-13-84 and substitute in lieu thereof pages 3 through 4A, dated 10-2-84; pages 5 and 6, dated 9-14-84; pages 7 and 8, dated 10-2-84; and pages 29 and 30, dated 9-11-84, which*

update procedures for: randomly verifying work search contacts listed on the back of payorder cards; making Employment Services photo-identification cards for claimants who have neither a driver's license nor any other photo-identification; and completing a sufficient number of claim forms to determine the most recent ten (10) week potentially chargeable employer. [Chapter 11000, Unemployment Compensation for Federal Employees, Section 11178, strike pages 17 and 18, dated 3-7-84 and substitute in lieu thereof pages 17 and 18, dated 8-13-84, which update payroll rate schedules (G.S. Grades) for federal employees which were made retroactive to January 1, 1984.]

(b) *Chapter 3000, Continued Claims, Sections 3040, 3060 and 3110, strike pages 5 and 6, dated 5-18-84; pages 9 and 10, dated 6-4-84; pages 13 and 14, dated 6-11-84; and pages 17 and 18, dated 7-13-84 and substitute in lieu thereof pages 5 and 6, dated 10-2-84; pages 9 and 10, dated 10-2-84; pages 13 and 14, dated 10-3-84; and pages 17 and 18, dated 9-11-84 which update procedures for: making Employment Services photo-identification cards for claimants who have neither a driver's license nor any other photo-identification; initialing completed data change requests; and randomly verifying work search contacts listed on the back of payorder cards.* [Chapter 13000, Statistical Reports, Sections 13200, 13215 and 13220, strike pages 7 through 14, dated 2-10-84 and substitute in lieu thereof pages 7 through 14, dated 8-13-84 which update procedures for completion of form UI-301, Weekly Report of Claims Activities.]

(2) *Unemployment Insurance Field Audit Manual. Chapter 300, Interpretations of the Law, Sections 339 and 342, strike Contents pages, dated 3-30-84; page 15, dated 2-1-84; page 16, dated 5-1-84; page 17, dated 2-1-84; page 18, dated 6-8-84; page 19, dated 5-1-84; pages 20 through 23, dated 2-1-84; pages 24 and 25, dated 5-1-84; page 26, dated 6-8-84; and pages 27 and 28, dated 2-1-84 and substitute in lieu thereof Contents pages and pages 15 through 30, all dated 9-3-84 which update procedures for: determining when Job Training Partnership Act training allowances are considered to be wages; and assigning the ten (10) percent tax rate to new contract construction employers.* [Unemployment Insurance Benefit Branch Procedures Manual, Chapter 2000, State and Federal Claims, Section 036, strike pages 17 and 18, dated 2-8-83 and substitute in lieu thereof pages 17 and 18, dated 9-5-84 which update payroll rate schedules (G.S. Grades) for federal employees which were made retroactive to January 1, 1984.]

(3) *Chapter 400, Synopsis of Benefits, Sections 410, 420, 425 and 440, strike Contents page, dated 3-30-84; page 1, dated 9-3-84; pages 2 and 3, dated 2-1-84; page 4, dated 6-8-84; and pages 5 and 6, dated 2-1-84 and substitute in lieu therof Contents page and pages 1 through 6, all dated 9-3-84 which update procedures for: assigning benefit charges to the most recent employer for whom the claimant worked in each of ten (10) weeks, whether or not consecutive; and determining the circumstances under which an otherwise eligible claimant may voluntarily quit his next most recent employment and still qualify for benefits.* [Unemployment Insurance Tax Collections and Accounting Branch Manual, Chapter 100, Status, strike the contents page and pages 1 through 65, dated 11-30-82 and substitute in lieu thereof the contents pages 1 through 5 and pages 1 through 104, all dated 8-1-84, to include stylistic revisions in procedures relating to the operations of the Status and Compliance Unit.]

(4) Chapter 500, Procedures, Sections 507 and 568, strike Contents pages, dated 3-30-84 and 6-8-84; page 8, dated 6-8-84; and pages 38 and 38A, dated 6-8-84 and substitute in lieu thereof Contents pages, page 8 and pages 38 and 38A, all dated 9-3-84 which update procedures for assigning auditors to cases.

Section 3. 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: October 10, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: 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: 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: The amendment does not change any process or procedure, hence no impact involved.

Tiering:
Was tiering applied? No. Procedures already in effect; all claimants are treated equally under the law.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services
(Proposed Amendment)

905 KAR 7:030. Children's residential services facilities manuals.

RELATES TO: KRS Chapters 202A and 208
PURSUANT TO: KRS 13A.210, 194.050
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 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 programs for the care and treatment of children who are delinquent, status offenders and mentally ill or emotionally disturbed. This regulation is tiered by facility based on type of child admitted, degree of security, and treatment program.

Section 1. Children's Residential Services Facilities Manuals. The Cabinet for Human Resources hereby adopts by reference as operating policies and procedures for the residential facilities, operated by the Department for Social Services, the following manuals: Northern Kentucky Treatment Center Policy and Procedure Manual revised through *October 1* [May 11], 1984; Lake Cumberland Boys' Camp Policy and Procedural Manual revised through May 11, 1984; Morehead Treatment Center Policy Manual dated 1983; Central Kentucky Treatment Center Policy Manual dated 1983; Green River Boys' Camp Policy and Procedures Manual revised through May 11, 1984; Woodsbend Boys' Camp Policies and Procedures revised through May 11, 1984; Cardinal Treatment Center Policy and Procedural Manual revised through *October 1* [May 11], 1984; Rice-Audubon Policy and Procedural Manual revised through May 11, 1984; Lincoln Village Policy and Procedures Manual dated September 15, 1983; Re-Ed Treatment Program Policy/Procedural Manuals, [Chapters II, III, and IV] revised through *October 1* [May 11], 1984; and Central Kentucky Re-Ed Center Policy and Procedural Manual, Lexington, revised through *October 1* [May 11], 1984. These manuals set forth the policies and procedures for the care and treatment of juveniles residing in the above listed residential facilities. The manuals may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

Section 2. Summary of Amendments. (1) In the Northern Kentucky Treatment Center Policy and Procedural Manual add a new section at the end of the manual for staff development and insert Provision for Staff Development and Training Services at Children's Treatment Service reviewed August 1, 1984, In-Service Training reviewed August 1, 1984, and Training Records revised April 30, 1984.

(2) In the Cardinal Treatment Center Policy and Procedural Manual following the section on Staff Development add a new section on Personnel which includes table of contents, personnel policies, orientation, employee code of conduct, probationary evaluation of all employees, scheduling and work assignments, facility over unit priorities, affirmative action plan, promotions, reclassifications, transfers and resignations, salary increases, leave, overtime, taking leave, pay days, timekeeping and time recording, disciplinary actions, grounds for expulsion, grievances, grievance committee, solicitation of employees, employee health program, benefits, liability insurance, staff injuries on duty, identification cards, keys, educational opportunities and staff documentation of Cardinal policy orientation revised August 11, 1984; strike from the treatment section Contraband Items on Living Unit, School or other areas dated October 21, 1983, and substitute in lieu thereof Contraband Items on Living Unit, School or other areas revised July 12, 1984; strike from the treatment section Treatment Modality—Phase System revised March 21, 1984, and substitute in lieu thereof Treatment Modality—Phase System revised June 23, 1984, which sets forth the criteria for carrying out of the phase system; insert following the Treatment Modality—Phase System, Progress Notation dated July 12, 1984; add a new section on Family Involvement following Juvenile Rights and insert visiting With Staff Members effective July 12, 1984, and Therapeutic Offgrounds Trips With Staff revised July 12, 1984, which sets forth the policies and procedures relating to off-site visits or trips by residents with staff; add at the end of the section on Staff Development Provision for Staff Development and Training Services at Children's Treatment Services reviewed August 1, 1984, In-Service Training reviewed August 1, 1984, Training Program Evaluation effective May 24, 1984, and Training Records revised May 24, 1984, which establishes policies and procedures for staff development; in the section on Referral, Admission, and Discharge Procedures strike Admission Criteria dated June 29, 1983, and substitute in lieu thereof Admission Criteria revised July 12, 1984, which consolidates existing admission criteria; add at the beginning of the section on Juvenile Rights, policy number 601, Residents' Rights effective October, 1984, which sets forth the fundamental rights of residents; at the end of the Personnel section add policy number 1029, Media Contacts, effective October 1, 1984, which sets forth policies for dealing with news media.

(3) In the Re-ed Treatment Program Policy and Procedural Manual—Administrative and Safety Section strike pages beginning with Re-ed School of Kentucky to Table of contents, Chapter IV: Safety and substitute in lieu thereof Re-ed Treatment Program Policy and Procedures Manual Table of Contents dated October 1, 1984, Re-ed Treatment Program Historical Background dated October 1, 1984, Children's Residential Services Description reviewed June 1, 1984, Lines of Communication and Administrative Supervision reviewed April 27, 1984, Role of Program Director revised May 8, 1984, Establishing and Revising Policies/Procedures effective May 4, 1984, Executive Committee revised May 8, 1984, the Admissions Committee revised October 7, 1983, the Safety Committee reviewed January 13, 1984, Staff Development and Training Committee reviewed June 8, 1984, Role of Team Leader revised January 31, 1984, role of Re-ed Liaison reviewed January 21, 1984, role of Nurse revised January 31, 1984, Role of School Center Head reviewed May 8, 1984, Role of Juvenile Counselor revised January 31, 1984, role of Youth Facility Officer Senior revised May 4, 1984, role of Volunteer Coordinator reviewed May 8, 1984, Practicum Students revised June 15, 1984, Media Inquiries revised June 15, 1984, and Field Trips reviewed May 8, 1984, which renumber and reorder existing instructions; School Services reviewed May 8, 1984, which provide that all children receive appropriate education and Support Services reviewed April 1, 1984, which provides for services

from Hazelwood ICF/MR; add a new section of Staff Development and insert Provision for Staff Development and Training Services at Children's Treatment Service reviewed August 1, 1984, In-Service Training reviewed August 1, 1984, and Training Records revised August 30, 1984, which set forth the policies and procedures for staff development.

(4) In the Central Kentucky Re-ed Center Policy and Procedures Manual strike page A-7.1, committee, functions and descriptions dated November 11, 1983, and substitute in lieu thereof page A-7.1, Committee, Functions and Descriptions revised August, 1984; strike page A-14.1, Care of Premises, Equipment, Vehicles revised September, 1983, and substitute in lieu thereof page A-14.1, Care of Premises, Equipment, Vehicles revised August, 1984; strike pages A-16.1 and A-16.2, Purchasing and Supplies revised September, 1983, and substitute in lieu thereof pages A-16.1 and A-16.2, Purchasing, Ordering and Receiving revised July 25, 1984; strike pages A-19.1 and A-19.2, Program Director—Responsibilities and Duties effective December, 1983, and substitute in lieu thereof pages A-19.1 and A-19.2, Program Director—Responsibilities and Duties revised August, 1984; strike pages A-21.1 and A-21.2, Night Supervisor—Responsibilities and Duties effective November 22, 1983, and substitute in lieu thereof pages A-21.1 and A-21.2, Night supervisor—Responsibilities and Duties, revised August, 1984; strike page A-28.1, Night Teacher Counselor—Duties and Responsibilities, effective January, 1984, and substitute in lieu thereof page A-28.1, Night Teacher Counselor—Duties and Responsibilities reviewed July 25, 1984; strike pages A-29.1 and A-29.2, Residential Counselor—Duties and Responsibilities, effective January, 1984, and substitute in lieu thereof pages A-29.1 and A-29.2, Residential Counselor—Duties and Responsibilities reviewed July 25, 1984; strike page A-31.1, Specialty Program Counselor—Duties and Responsibilities effective December, 1983, and substitute in lieu thereof page A-31.1, Specialty Program Counselor—Responsibilities and Duties reviewed July 25, 1984; strike pages A-32.1 and A-32.2, Nurse, Registered—Duties and Responsibilities effective December, 1983, and substitute in lieu thereof pages A-32.1 and A-32.2, Nurse, Registered—Responsibilities and Duties, reviewed July 25, 1984; Strike A-35.1 and A-35.2, Teacher—Emotionally Disturbed/Behavioral Disorder Classroom effective December, 1983, and substitute in lieu thereof pages A-35.1 and A-35.2, Teacher—Emotionally Disturbed/Behavioral Disordered Classroom Reviewed July 25, 1984; add at the end of the section on Administration pages A-44.1 and A-44.2, Inventory Control/Method of Conducting Inventory effective August 15, 1984; strike page E-3.1, Bomb Threat effective November 11, 1983, and substitute in lieu thereof page E-3.1, Bomb Threat revised July, 1984; strike page E-12.1, Tornado Procedures effective November 11, 1983, and substitute in lieu thereof page E-12.1, Tornado Procedures revised August, 1984; strike pages M-1.1 and M-1.2 revised November, 1983, and substitute in lieu thereof pages M-1.1, M-1.2 and M-1.3, Parental Responsibilities for Medical Information and Documentation revised June 28, 1984; strike pages M-3.1 and M-3.2, Medical Information Flow revised January 16, 1984, and substitute in lieu thereof pages M-3.1 and M-3.2, Medical Information Flow reviewed July 25, 1984; strike page M-4.1, Medication Administration effective November 28, 1983, and substitute in lieu thereof pages M-4.1 and M-4.2, Medication Administration reviewed July 25, 1984; strike pages M-5.1, M-5.2, M-5.3, M-5.4, M-5.5, and M-5.6, Medical Documentation effective November, 1983, and substitute in lieu thereof pages M-5.1, M-5.2, M-5.3, M-5.4, M-5.5 and M-5.6, Medical Documentation reviewed July 25, 1984; strike pages M-6.1, M-6.2 and M-6.3, Storage and Preparation of medication, revised November, 1983, and substitute in lieu thereof pages M-6.1, M-6.2 and M-6.3, Storage and Preparation of medication reviewed July 25, 1984; strike pages M-7.1, M-7.2 and M-7.3, Resident Requiring Medical Attention—Minor Illness or Accident revised November, 1983, and substitute in lieu thereof pages M-7.1, M-7.2, M-7.3, Resident Requiring Medical Attention—Minor Illness or Accident reviewed July 25, 1984; at the end of the section on Records add pages R-3.1 through R-3.5, Abbreviations effective July 20, 1984; strike page S-11.1, Tornado Procedures effective November 11, 1983, and substitute in lieu thereof page S-11.1, Tornado Procedures revised August, 1984; strike page S-12.1, Bomb Threat, effective November 11, 1983, and substitute in lieu thereof page S-12.1, Bomb Threat, revised August, 1984; strike pages S-14.1 and S-14.2, Staff Addresses and Phone Numbers effective November, 1983, and substitute in lieu thereof pages S-14.1 and S-14.2, Staff Addresses and Phone Numbers, effective August, 1984; strike pages T-1.1, T-1.2 and T-1.3, Admissions Criteria—Referral and Admissions Procedures revised October, 1983, and substitute in lieu thereof pages T-1.1, T-1.2, and T-1.3, Admissions Criteria—Referral and Admissions Procedures revised June 28, 1984; strike page T-2.1, Treatment Plan for Admission, effective October, 1983, and substitute in lieu thereof page T-2.1, Initial Treatment Plan, revised July 11, 1984; strike pages T-3.1, T-3.2, Parent Education Training/Parent Involvement revised October 7, 1983, and the form entitled Family Participation Contract dated April, 1983, and substitute in lieu thereof pages T-3.1, T-3.2, T-3.3, Parent Involvement/Parent Education Training revised June 28, 1984, and the form entitled Family Participation Contract revised June, 1984; strike pages T-7.1 and T-7.2, Residents' Bill of Rights effective October, 1983, and substitute in lieu thereof page T-7.1 and T-7.2, Residents' Bill of Rights revised June 18, 1984; strike pages T-14.1 and T-14.2, Principles for Working with ED/BD Children at Re-ed, effective November 11, 1983, and substitute in lieu thereof pages T-14.1 and T-14.2, Principles for Working with ED/BD Children at Re-ed, revised August, 1984; strike pages T-16.1, T-16.2 and T-16.3, Children's Daily Living Routines, revised December, 1983, and substitute in lieu thereof pages T-16.1, T-16.2, and T-16.3, Children's Daily Living Routines, revised July 17, 1984; strike page T-18.1, Treatment Plan: Guidelines for Developing Residents' Treatment Plan effective October, 1983, and substitute in lieu thereof page T-18.1, Treatment Plan: Guidelines for Developing Residents' Treatment Plan revised July 11, 1984; strike pages T-19.1 and T-19.2, Social Goals, effective November 11, 1983, and substitute in lieu thereof pages T-19.1 and T-19.2, Social Goals revised July 11, 1984; strike pages T-20.1, T-20.2 and T-20.3, Staffing/Meetings revised October, 1983, and substitute in lieu thereof pages T-20.1 and T-20.2, Monthly Review Meetings, Team Planning Meetings and Consultation Staffings, revised July, 1984; strike pages T-24.1, T-24.2, and T-24.3, Treatment Modalities: Activity Therapies effective October, 1983, and substitute in lieu thereof pages T-24.1, T-24.2 and T-24.3, Treatment Modalities: Activity Therapies, revised August, 1984; strike page T-25.1, Community Involvement—Child Centered Activities effective

September 30, 1983, and substitute in lieu thereof page T-25.1, Community Involvement—Child Centered Activities revised August, 1984; strike page T-26.1, Field Trips, effective June 1, 1981, and substitute in lieu thereof page T-26.1, Field Trips revised August, 1984; strike page S-6.1, Hazardous Areas on Grounds, effective September 22, 1980, and substitute in lieu thereof page S-6.1, Hazardous Areas on Grounds, revised October 1, 1984; strike page S-3.1, Principle Safety Regulations effective November 11, 1983, and substitute in lieu thereof page S-3.1, Principle Safety Regulations revised October 1, 1984; at the end of the section on Treatment add page T-41.1, Student Council effective June 19, 1984; in the section on Staff Development add in numerical sequence by policy number SD-001, Provision for Staff Development and Training Services at Children's Treatment Services reviewed August 1, 1984, SD-003, In-Service Training, reviewed August 1, 1984, SD-7, Children's Residential Staff Training Requirements effective August 15, 1984; and SD-013, Training Records, revised April 30, 1984; strike the Table of Contents in the Administration section and substitute in lieu thereof Table of Contents—Administration, dated October 1, 1984; strike the Index, Medical Policies and Procedures at the end of the Medical section and substitute in lieu thereof the Index, Medical Policies and Procedures dated October 1, 1984; strike the Table of Contents—Records and substitute in lieu thereof the Table of Contents—Records dated October 1, 1984; strike the Table of Contents—Staff Development, and substitute in lieu thereof the Table of Contents—Staff Development dated October 1, 1984; strike the Table of Contents—Treatment and substitute in lieu thereof Table of Contents—Treatment dated October 1, 1984; strike Central Kentucky Re-ed Center Index and substitute in lieu thereof Central Kentucky Re-ed Index dated October 1, 1984.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984, at 9 a.m., in the CHR Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing. 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:
(a) Direct and indirect costs or savings to those affected:
1. First year: No change—Existing policies merely being filed as regulations
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: Same as above
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. Programs are operated on a statewide basis.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services
(Proposed Amendment)

905 KAR 7:080. Children's treatment services facility manual.

RELATES TO: KRS Chapters 202A and 208
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: P.L. 97-35, Subtitle C, "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 the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement programs for the care and treatment of mentally ill and/or emotionally disturbed children by the Children's Treatment Service facility operated by the Department for Social Services.

Section 1. Children's Treatment Service Facility Manuals. The Cabinet for Human Resources hereby adopts, by reference, as operating policies and procedures of the Children's Treatment Service, Lakeland Road, Louisville, Kentucky, operated by the Department for Social Services, the following manuals: Policy Manual *revised through October 1, 1984* [dated June 16, 1983]; Therapeutic Milieu Manual revised through *October 10* [July 23], 1984; Psychology Procedural Manual dated *revised through October 1, 1984* [February 10, 1983]; Nursing Manual dated February 10, 1983; Staff Development/Volunteer Procedures Manual revised through *October 1* [July 23], 1984; Emergency Services Manual revised through May 11, 1984; Safety Rules and Practices revised through *October 1,* [May 11], 1984; Pharmacy Manual revised through *October 1* [May 11], 1984; Medical Procedures Manual dated February 10, 1983; The Living Unit Manual revised through July 23, 1984; and Social Services Manual dated February 10, 1983. These manuals set forth the policies and procedures used in the Children's Treatment Services program to provide care and treatment for juveniles residing in this facility. These manuals may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky; and Children's Treatment Service, Lakeland Road, Louisville, Kentucky.

Section 2. Summary of Amendments. (1) In the CTS *Policy Manual strike page 101, Provision for Staff Development and Training Services at Children's Treatment Services, reviewed August 1, 1984, and substitute in lieu thereof page 101, Provision of Staff Development and Training Services at Children's Treatment Service, reviewed August 1, 1984, which changes authorization to the Department for Social Services; and strike pages 133 and 134, Patient Leave Status, revised January, 1983, and substitute in lieu thereof pages 133 and 134, Patient Leave Status, revised August 3, 1984, which limits Otherwise Absent for Treatment (OAT) to thirty (30) days, sets limits for absent without leave, and requires Executive Committee approval for OAT in excess of thirty (30) days.* [Therapeutic Milieu Manual strike pages A1-A5 revised January 28, 1983, and substitute in lieu thereof pages A1-A5 revised March 9, 1984, which clarify the use of the phase system, transmit a revised weekly phase point tabulation sheet and revised requirements to qualify for each phase].

(2) In the CTS *Staff Development/Volunteer Procedures Manual strike page J2, Provision for Staff Development and Training at Children's Treatment Service, revised January 15, 1983, and substitute in lieu thereof page J2, Provision for Staff Development and Training at Children's Treatment Service, reviewed August 1, 1984, which changes authorization to Department for Social Services; strike page J4, In-Service Training, reviewed January 15, 1983, and substitute in lieu thereof page J4, In-Service Training, reviewed August 1, 1984, which adds training needs related to accreditation and/or licensing standards; strike pages J41-J46, Training Program Evaluation, reviewed January 15, 1983, and substitute in lieu thereof pages J39-J43, Training Program Evaluation, revised April 30, 1984, which provides for an annual evaluation of the training program and attendance records on those receiving training.* [Living Unit Manual strike pages D32-D36 revised January 28, 1983, and substitute in lieu thereof pages D32-D36 revised through March 9, 1984, which clarify the use of the phase system, transmit a revised weekly phase point tabulation sheet and revised requirements to qualify for each phase.]

(3) In the CTS *Therapeutic Milieu Manual strike pages A134-A136(a), Treatment Team Process-Guidelines for Treatment Planning, revised October, 1982, and substitute in lieu thereof pages A134-A136(a), Treatment Team Process-Guidelines for Treatment Planning, revised April 23, 1984, which provides for a written comprehensive individual treatment plan for each resident; strike page A163, Discharge Agreement/Release, and substitute in lieu thereof page A163, Discharge Agreement/Release, dated September 29, 1984, which adds outpatient therapy to the release form.* [Staff Development Manual add the new label, Staff Development and Volunteer Procedure Manual; add the divider labeled volunteers behind the staff development section and all of the attached material. This addition sets forth the policies and procedures for the recruitment, training and use of volunteers in the Children's Treatment Services facility.]

(4) *In the CTS Nursing Manual strike the nursing Services Procedural Index, pages 1-3 and substitute in lieu thereof Nursing Services Procedural Index, dated October 1, 1984, pages 1-4 which lists the contents of the nursing manual; strike the page entitled "Nursing Services Manual" and substitute in lieu thereof page entitled "Nursing Services Manual" dated August 1, 1984, which gives the table of contents for the Introduction selection of the manual; strike pages C1 and C2, Philosophy and Goals of the Nursing Department revised October, 1982, and substitute in lieu thereof pages C1 and C2, Philosophy and Goals of the Nursing Department revised March, 1984, which adds the organizational chart for the nursing department; strike page C6, Chief Nurse—Responsibilities and Duties, revised October, 1982, and substitute in lieu thereof pages C6 and C6(a), Director of Nursing—Responsibilities and Duties, revised March, 1984; page C6(b), Assistant Director of Nursing—Responsibilities and Duties dated March 26, 1984; and page C6(c), Nursing Supervisor Responsibilities and Duties, dated June, 1984, which set forth the duties and responsibilities of the Director, Assistant Director and Supervisor of Nursing; strike pages C7 and C8, Ward Nurse-Responsibilities and Duties, revised October, 1982, and substitute in lieu thereof pages C7 and C8, Nurse's Responsibilities and Duties, revised April, 1984, which set forth the duties and responsibilities of the nursing staff; strike page C147, Lice, revised January 3, 1980, and substitute in lieu thereof page C147, Pediculosis, (Capitis, Corporis, and Pubis) revised October 1, 1984, which defines the different types of lice and provides instruction for eliminating lice; and add at the end of the manual pages C178 through C184, roseola, impetigo, mumps, scabies, measles, athletes' foot, and hepatitis which define and provide instructions for treatment of the diseases.* [This amendment updates policies and procedures relating to the phase system and the use of volunteers in the Children's Treatment Services facility.]

(5) In the CTS Safety Rules and Practices Procedure Manual strike the page entitled "CTS Safety Rules and Practices Manual Index" and substitute in lieu thereof CTS Safety Rules and Practices Procedure Manual Index, dated October 1, 1984, which lists the contents of the safety manual; on page G4a, Severe Weather Emergency Evacuation Sites, revised April 2, 1984, add "Basement of Bingham Building" opposite "Shelter Cite;" insert after page G13, Prevention of Spread of Infections, revised December 2, 1982, pages G13a through G13h, pediculosis, roseola, impetigo, mumps, scabies, measles, athletes' foot, and hepatitis which define and provide instructions for implementing these diseases.

(6) In the CTS Pharmacy Manual strike page F18, Nursing Personnel Authorized to Administer Medications, revised October, 1982, and substitute in lieu thereof page F18, Nursing Personnel Authorized to Administer Medications, revised April, 1984; strike page F19, Medication Hours, reviewed January, 1983, and substitute in lieu thereof page F19, Medication Distribution, revised April, 1984.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 21, 1984 at 9 a.m. in the CHR Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing. 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:
(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:
(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. All staff at Children's Treatment Services required to follow uniform policies and procedures.

Proposed Regulations

DEPARTMENT OF MILITARY AFFAIRS

106 KAR 1:040. Division of Air Transport and use of state aircraft.

RELATES TO: KRS 35.010, 36.040
PURSUANT TO: KRS 13A.350
NECESSITY AND FUNCTION: The Division of Air Transport and Capital City Airport is recognized as established in the Department of Military Affairs by KRS 36.010(8). This regulation establishes policies and procedures relating to the administration of the Division of Air Transport and Capital City Airport, and the use of state-owned aircraft, including aircraft charters.

Section 1. The Adjutant General of Kentucky, as executive head of the Department of Military Affairs, is responsible for overall policy development and supervision of the affairs of the Division of Air Transport and Capital City Airport. The Airport Administrator of the Capital City Airport is responsible, under the supervision of the Adjutant General, for the management and administration of the Division of Air Transport and the Capital City Airport.

Section 2. The function of the Division of Air Transport and Capital City Airport (hereinafter, "the Division of Air Transport") is to manage and operate the Capital City Airport, oversee the maintenance and care of all state-owned aircraft, control the scheduling and operational use of state aircraft (including air charters), and attend to the collection from using agencies and officers the costs of operating state aircraft. The division shall, subject to the approval of the Adjutant General, and in accordance with applicable state and federal rules, establish user fees to be paid by users of the services and facilities of the Capital City Airport. The public user rates are as set forth below:

HANGER CHARGES

Single Engine:	230 horsepower or less	$ 50.00 per month
	231 horsepower or more	$ 75.00 per month
Twin Engine:	6,000 lbs. or less gross weight	$100.00 per month
	6,001 lbs to 12,499 lbs. gross weight	$125.00 per month
	12,500 lbs. gross weight and above	Negotiated

RAMP CHARGES

Single Engine	$ 15.00 per month
Twin Engine	$ 25.00 per month
Overnight Charges	$ 1.00 each night

Section 3. (1) State aircraft (including aircraft charters) shall be used only for official business. "Official business," for purposes of this regulation shall be construed as being any activity involving travel in a state aircraft which is reasonably required, expected, or is appropriate, considering the nature of the using public official's job responsibilities, or which is otherwise in the best interest of the Commonwealth. Such activities include by way of example but not of limitation, attendance by officials at non-partisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate and non-political flights within the Commonwealth by the Governor and members of his/her immediate family when accompanying him/her.

(2) State aircraft shall not be used for personal business; provided, however, that in the case of the Governor and the Lieutenant Governor, reasons of security, protocol, ceremonial functions, and overall demands on their time, require travel considerations not accorded other officials. Therefore, in recognition of these realities, flights which may be solely for personal business, or partly for official business and personal business, may be scheduled for the Governor and the Lieutenant Governor and their immediate families. The cost of flights scheduled solely for personal business of the Governor or Lieutenant Governor shall be charged to such officer in accordance with the rate schedule established by the Division of Air Transport. In cases where a particular flight may be in part official business and personal business, the Governor or the Lieutenant Governor shall make a reasonable allocation of the flight time between his/her official and personal business and shall be responsible for paying to the Division of Air Transport the charge for the part of such flight that is allocable to his/her personal business. In such cases, the allocation made and the basis for the allocation shall be indicated on the aircraft request form.

Section 4. Constitutional officers, other elected state officials, members of the General Assembly, officers and

employees of the cabinets, departments, and agencies of the state government, officers and employees of other governmental units, and other persons traveling under the auspices of a state agency or in connection with state business deemed desirable by an agency head, including dependents of state officials, news media representatives, and other persons having an interest in the official purpose of the trip, may be authorized to use state aircraft. Charges for travel in state aircraft shall be paid by the requesting state agency in accordance with the rate schedule established by the Division of Air Transport.

Section 5. All requests for use of state aircraft shall be approved in advance by the appropriate constitutional officer, program cabinet secretary, or by the Secretary of the Cabinet for General Government agencies. Approving officials shall be responsible for determining that a trip is for official business and that whether the proposed passenger complement conforms to the requirements of Section 4 of this regulation. In determining passenger complement, requesting agencies should weigh the benefit to the agency of the inclusion of additional passengers against the increased costs that might be incurred if a larger aircraft is required to accommodate additional passengers on a trip.

Section 6. (1) All requests for use of state aircraft shall be submitted on a form prescribed by the Division of Air Transport and shall contain at a minimum the following information:

(a) Cabinet or agency name;

(b) Department name with appropriate billing account number;

(c) Purpose of trip;

(d) Destination, including any planned stopovers and reason for them;

(e) Names of all passengers on flight; and

(f) Identification of any percentage of flight for personal business (in cases of the Governor or Lieutenant Governor).

(2) The Division of Air Transport shall arrange for all trips and maintain flight cards, passenger manifests, payment documents, and inter-account bills pertaining to each flight. Pilots for all state aircraft shall maintain a flight manifest for all flights which shall include passengers' names and information pertaining to the points of origin and destination, and any side trips or stopovers, for each flight.

(3) Except as provided in subsection (4) of this section, the Department of Military Affairs shall maintain original records of aircraft requests and manifests for all trips using state aircraft. The aircraft requests and manifests shall be compared and any discrepancies reported monthly to the appropriate cabinet secretary or constitutional officer so that any error may be corrected.

(4) Copies of aircraft requests and manifests will not be forwarded to the Finance and Administration Cabinet in cases where the Secretary of the Commerce Cabinet has certified in an aircraft request that disclosure of the identities of passengers, or the purpose of a trip, will violate needs for confidentiality required for economic development efforts. In such cases, the Secretary of the Commerce Cabinet shall maintain a record of all such requests in his office. It shall be the responsibility of their offices to maintain the originals of all requests for the use of state aircraft by the Governor or the Lieutenant Governor, but the Department of Military Affairs shall maintain original manifests pertaining to all trips, whether in or out-of-state, by the Governor and Lieutenant Governor when using state aircraft.

BILLY G. WELLMAN, The Adjutant General
APPROVED BY AGENCY: September 18, 1984
FILED WITH LRC: September 19, 1984 at 9:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 27, 1984 at 9 a.m. in Room 202 of the Headquarters Building (EOC), Boone National Guard Center, Frankfort, Kentucky. Any interested persons wishing to attend this hearing shall notify in writing at least five days before the hearing is scheduled the following office: Roger C. Green, Jr., Department of Military Affairs, Room 209, Headquarters Building (EOC), Boone National Guard Center, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger C. Green, Jr.

(1) Type and number of entities affected: All cabinets within state government that schedule and use state aircraft.

(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: Does not increase the present reporting and aircraft requesting requirement.

(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: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative; written procedures needed to be established.

(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 regulation that is essential to using agencies to insure proper use of aircraft and to fix responsibility for aircraft approval.

Tiering:
Was tiering applied? No. Not applicable to this situation.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:200. Migratory bird hunting seasons.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.630

PURSUANT TO: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified

migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for the Gun and Archery. (1) Ducks, Coots and Mergansers: November 20 through November 25 and December 8 through January 20.

(2) Geese:

(a) Eastern zone: November 20 through January 20, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

(b) Western zone: This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the western zone is subdivided into the Ballard quota zone and associated counties and the Henderson-Union quota zone and associated counties. Seasons within the western zone are specified as follows:

(c) Ballard quota zone: January 7 through January 31, or until such time as 4,400 Canada geese are harvested, whichever occurs first. This zone is defined as the area within the following boundary: Starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 4,400 Canada geese will be filled prior to January 31, the goose hunting season will close in the Ballard quota zone and in those portions of Ballard, McCracken, Graves, Carlisle, Hickman, Fulton and Marshall Counties in the western zone. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(d) Henderson-Union quota zone: January 7 through January 31, or until such time as 1,400 Canada geese are harvested, whichever occurs first. This quota zone includes those portions of Henderson and Union Counties within the western zone. Should it be determined that the quota of 1,400 Canada geese will be filled prior to January 31, the goose hunting season in this zone and those portions of Lyon, Crittenden and Livingston Counties in the western zone will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(3) Sora and Virginia Rails and Gallinules: November 20 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks, Coots and Mergansers:

(a) A point system bag limit is in effect. Point values are as follows for either sex unless specified:

Species		Points Each
1.	Canvasback and black duck	100
2.	Hen mallard, wood duck, hooded merganser and redhead	70
3.	Pintail, blue-winged teal, cinnamon teal, green-winged teal, widgeon, gadwall, shoveler, scaup and mergansers except hooded merganser	10
4.	Drake mallard and all other species of ducks not mentioned above	25
5.	Coots, but limited to fifteen (15) daily and thirty (30) in possession	0

(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds 100 points.

(c) The possession limit is the maximum number of ducks which could have legally been taken in two (2) days.

(2) Geese:

(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese.

(b) The possession limit is ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.

(3) Sora and Virginia Rails: The bag and possession limits are twenty-five (25) singly or in the aggregate.

(4) Gallinules: The bag and possession limits are fifteen (15) and thirty (30), respectively.

Section 3. Shooting Hours. One-half (½) hour before sunrise to sunset for all species listed in this regulation except that shooting hours in the Ballard quota zone will be one-half (½) hour before sunrise to 2 p.m. for ducks, geese, and coots during the goose season in the Ballard quota zone.

Section 4. Shot Size Restrictions. No shot larger than BBs may be in possession while hunting the species listed in this regulation.

Section 5. Falconry Season. November 1 through January 20. All species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours will conform with the shooting hours stated in Sections 3 and 7 of this regulation.

Section 6. Migratory Bird Shipping and Transporting Restrictions. Geese taken in the counties of Ballard, Hickman, Fulton and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of any licensed waterfowl hunter, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese.

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Unless otherwise specified in this section, stipulations of the other sections of this regulation apply.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons.

1. The season for ducks, coots and mergansers is January 9 through January 20.

2. The season for geese is January 9 through January 31, or until such time as the Ballard quota zone is closed, whichever occurs first.

3. No hunting is permitted on Sundays.

4. No more than three (3) persons shall occupy a single blind or pit at the same time.

(b) General rules. There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from blinds and pits is furnished by the department must have his gun encased.

(c) Shooting hours. The shooting hours are one-half (½) hour before sunrise to 12 noon.

(2) Peal Wildlife Management Area. That portion of the Peal Wildlife Area as designated by signs is closed to the public from October 15 through March 15. No person, except agents of the department and the U.S. Fish and Wildlife Service, shall enter upon this portion of the Peal Wildlife Area during the closed period. Waterfowl hunting on Fish Lake will be permitted from designated locations only. No more than one (1) blind may be placed at each designated location and all blinds must be removed daily. No more than three (3) persons may occupy a blind at one time.

(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed area. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. Duncan Bay is closed to all activity. The Environmental Education Center is closed to waterfowl hunting.

(b) LBL permit. An annual LBL hunting permit is required for waterfowl hunting on all shoreline and inland areas. Shoreline areas are defined as all LBL areas along Kentucky and Barkley Lakes from the waters edge to twenty-five (25) yards above elevation 359 feet. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to Lake Barkley Wildlife Management Area regulations. Inland areas are defined as all areas above shoreline areas. No waterfowl hunting is permitted on inland areas during quota gun deer hunt days. Permanent blinds and pits are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds must be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area.

(a) Closed areas. Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, Fulton Bay will remain closed until March 15 and Honker Bay until March 1, or later if marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15. Recreation areas and access points are closed to hunting.

(b) Blinds and pits. Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a current Kentucky hunting license to the registration clerk before a permit will be issued. A permit will be issued for each permanent blind or pit and only one (1) permit will be issued per hunter. Within a specified area around Duck Island Refuge permanent blinds shall remain within ten (10) yards of the assigned number blind marker for the entire waterfowl season. This area is bounded as follows: Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area must be temporary. Blind or pit permittees will have priority over their registered blinds or pits and may claim ownership by showing their permit. Permits are not transferable to other hunters. Permanent registered blinds or pits must not be locked to exclude other waterfowl hunters when not occupied. All blinds or pits must be in place no later than the day before the opening of the goose hunting season. All blinds and pits must be 200 yards apart and 200 yards from any refuge as designated by signs. Permanent blinds or pits must be removed no later than thirty (30) days after the close of the waterfowl season. Any extension must be approved by the Lake Barkley Resource Manager.

(5) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties. All recreation areas, operational areas and islands, except Mason Island, are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season.

(6) Green River Wildlife Management Area. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registrants must have a valid Kentucky hunting license. No more than one (1) blind permit will be issued per immediate family.

(7) Nolin, Rough River, and Buckhorn Wildlife Management Areas. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season.

(8) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Waterfowl hunting is permitted only from permanent blinds or pits registered by the department.

(b) Jenny Hole-Highland Creek Unit. Waterfowl hunting will be allowed from permanent blind or pit sites registered by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties.

(c) Blind or pit registration. Applicants for a permanent blind or pit must show a current Kentucky hunting license before a permit will be issued. The drawing for blind registration order will occur October 2, from 6 p.m. until 8 p.m. at the Henderson Community and Youth Center in Atkinson Park, Henderson. The drawing will be followed

by registration in which hunters with the lowest numbers will receive first choice of blind or pit locations. A hunter may designate one (1) other person as a partner for registration. Two (2) nontransferable permits will be issued for each permanent blind or pit and only one (1) permit per hunter will be issued. Either of the permittees for a location will have priority over other users of their registered blinds or pits and may claim ownership by showing their permit. Registered blinds or pits must not be locked to exclude other hunters when not occupied by the permittee. Any waterfowl hunter may occupy any unoccupied blind or pit until claimed by the permittee. Only four (4) persons may occupy a blind or pit at one time. All blinds and pits must be 200 yards apart and at the designated locations. Permit holders who have not constructed their blind or pit at the designated location by November 20 will lose their location and the site may be assigned to another hunter. Blinds or pits and all construction materials must be removed from the area no later than thirty (30) days after the close of the waterfowl season.

(d) Shooting hours. One-half (½) hour before sunrise to 2 p.m.

(e) When the Ohio River reaches a level that requires boat access to the units, hunting will be allowed from boats spaced 200 yards apart, without regard to the registered blinds or pits.

(f) Sauerheber Unit of the Sloughs Wildlife Management Area located in Henderson County, except the Crenshaw and Duncan Tracts, will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. The privately owned inholding totaling 468 acres and known as the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east and the Sauerheber Unit of the Sloughs WMA, is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

(9) Ohio River Islands Wildlife Management Area. This area consists of Twin Sisters, Pryor, and Rondeau Islands and the mainland marsh area between Twin Sisters and Pryor Islands. Waterfowl blinds must be removed at the end of each day's hunting. All blinds must be 200 yards apart and only four (4) persons may occupy a blind at one time.

(10) Ohio River Waterfowl Refuge located in Livingston County will be closed to all hunting and molesting of waterfowl from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(11) Ohio River in the vicinity of the Ballard Wildlife Management Area. Waterfowl hunting is not permitted on the Ohio River from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(12) That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and Bruin Creek portions of Grayson Lake, is closed to all waterfowl hunting.

(13) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(14) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties is closed to all waterfowl hunting.

(15) Cane Creek Wildlife Management Area located in Laurel County is closed to all waterfowl hunting.

(16) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all waterfowl hunting.

(17) Redbird Wildlife Management Area located in Leslie and Clay Counties is closed to all waterfowl hunting.

(18) Mill Creek Wildlife Management Area located in Jackson County is closed to all waterfowl hunting.

(19) Ohio County south of Rough River, Muhlenberg County east of state route 181, and Butler County west of state route 79 are closed to goose hunting.

Section 8. Ballard and Henderson-Union Quota Zone Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union quota zones without first obtaining the appropriate waterfowl hunting permit, or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area is any area of land or water, used in whole or in part for the taking of migratory waterfowl where a monetary charge is made.

(b) A commercial waterfowl hunting permit issued by the department must be obtained by any person operating a commercial waterfowl hunting area. An annual fee will be charged for each commercial waterfowl hunting permit. Persons operating more than one (1) commercial waterfowl hunting area must obtain a permit for each individual area.

(c) A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit is required for each tract of land operated as a commercial waterfowl hunting area.

(2) Non-commercial waterfowl hunting areas.

(a) A non-commercial waterfowl hunting area is any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(b) Any person controlling the waterfowl hunting rights and privileges on a non-commercial waterfowl hunting area must obtain a free migratory goose hunting area permit. This permit shall expire annually on the day after the end of the waterfowl season.

(c) The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(d) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Services.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, it is permissible that only one (1) hunter of the party possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard quota zone may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056.

(b) Persons desiring commercial waterfowl hunting permits, migratory goose hunting area permits, or a season supply of goose harvest reporting forms for the Henderson-Union quota zone may apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

(c) Waterfowl harvest register forms for either quota zone will also be available from conservation officers in each zone and from the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

Section 9. Ballard and Henderson-Union Quota Zone Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original copy of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee must hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violations of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original copy of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee must hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union quota zones must:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. No later than Monday and Thursday of each week, mail or take the completed original copy of the waterfowl harvest register to the address indicated on the form.

Section 10. General Rules Concerning Waterfowl Hunting in the Ballard Quota Zone. (1) It is unlawful to hunt waterfowl except from a blind or a pit. For the purposes of this section, an anchored, stationary, or drifting boat from which waterfowl are hunted is considered to be a blind.

(2) It is unlawful to establish or use any blind or pit for the hunting of waterfowl within 100 yards of any other blind or pit.

(3) It is unlawful to establish or locate any blind or pit within fifty (50) yards of any property line.

(4) It is unlawful for more than five (5) persons, each having one (1) shotgun, to occupy a single blind or pit at the same time.

Section 11. 301 KAR 2:055, Pits and blinds restrictions, 301 KAR 2:088, Limits and seasons for taking migratory birds, and 301 KAR 3:070, Goose harvest reporting, are hereby repealed.

CARL E. KAYS, Commissioner
ROBERT C. WEBB, Chairman
G. WENDELL COMBS, Secretary

APPROVED BY AGENCY: October 2, 1984
FILED WITH LRC: October 2, 1984 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 1984 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact in writing by November 21, 1984 the following office: William D. Graves, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the waterfowl hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a federal migratory bird hunting and conservation stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($7.50 for residents) unless exempted by statute and a $7.50 migratory bird hunting and conservation stamp. Commer-

cial waterfowl hunting operators will be required to purchase a $40 permit each.

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: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union Quota Zones will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. In addition, commercial and non-commercial waterfowl hunting area operators in the Henderson-Union Quota Zone will be required to maintain harvest records and report waterfowl harvest on forms provided by the department.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation and administering the harvest registration zones.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: Implementation of a new goose harvest registration zone in Henderson and Union Counties will involve additional printing, postage, manpower and enforcement expenses on an annual basis. This is estimated to be $5,000 this year.

(b) Reporting and paperwork requirements: A biweekly monitoring of harvest registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union Quota Zones. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food, and lodging. The average annual expenditure for these items is $110 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds occurs through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most recreational opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(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. This type of regulation does not appear to be adaptable to the tiering process since it is specific to migratory bird hunters.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Migratory bird hunting seasons
SPONSOR: Department of Fish and Wildlife Resources
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: No.
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY:
MEASURE'S PURPOSE:
PROVISION/MECHANICS:
FISCAL EXPLANATION:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 57:011. Asbestos standards.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of asbestos emissions.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The national emission standard for asbestos contained in 40 CFR 61, Subpart M, made effective by Federal Register 49 FR 13661, April 5, 1984, and as amended by Federal Register 49 FR 25453 June 21, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart M are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart M, provides standards for sources that use commercial asbestos. Standards for demolition, renovation, fabricating and waste disposal are also included. The standards provide for a no visible emission limitation and equipment or work practice requirements.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 57:010, Asbestos emissions, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those

persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on National Emission Standard for Hazardous Air Pollutants (NESHAPs) for asbestos emissions, 40 CFR 61, Subpart M. The federal regulation provides a no visible emission standard and work practice and equipment provisions for all sources of asbestos emissions. Available information indicates that there are sources that are regulated by Kentucky's present asbestos regulation, 401 KAR 57:010, but this new regulation will not impose any additional requirements on those sources. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state to continue to issue permits to those sources and any new sources, rather than the U.S. EPA.

(a) Direct and indirect costs or savings to those affected: In the promulgation of this regulation, the U.S. EPA did not provide any estimates on the costs of complying with the provisions of this regulation. EPA's position is that since most owners and operators are already complying with these provisions, there will be minimal adverse economic effects caused by promulgating this regulation. In addition, future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: All manufacturing and fabricating plants which use asbestos are required to apply for construction and operating permits. Demolition contractors are not required to apply for permits, but are required to report in advance, any intent to start a project.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division will review and process construction and operating permits, where applicable, and will oversee demolition and renovation projects involving asbestos removal. Costs for the permitting process will be recovered by a permit fee pursuant to 401 KAR 50:036.

For the projects involving asbestos removal, the Division will use additional resources in compliance and inspection efforts. Therefore, the Division has requested additional funds from U.S. EPA.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly.

Also, continuing costs will be incurred in additional inspection and compliance efforts.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources involved in manufacturing and fabricating asbestos and will issue reports of inspections and emission data as in 1 and 2 above.

Additional reporting and paperwork requirements will be incurred in the additional inspection and compliance efforts.

(3) Assessment of anticipated effect on state and local revenues: Contractors hired by local school districts to remove asbestos in schools may charge the school district more to comply with these requirements.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The Division of Waste Management also has requirements for the disposal of hazardous material, including asbestos. The Divisions of Air Pollution and Waste Management coordinate the issuance of permits to these sources. In addition, the Division of Air Pollution has delegated to the Air Pollution Control District of Jefferson County (APCDJC) the authority to enforce and implement an air pollution control program in Jefferson County. The regulations for APCDJC include a regulation on asbestos. In the event of any conflict, the more stringent regulation would apply.

(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: In the Federal Register of April 6, 1973 (38 FR 8826), and as subsequently amended, U.S. EPA promulgated a national emission standard for hazardous air pollutants (NESHAPs) for asbestos emissions, 40 CFR 61, Subpart B. U.S. EPA granted Kentucky the delegation of authority to enforce the provisions of the federal regulation based on the state's regulation 401 KAR 57:010. In the Federal Register of April 5, 1984 (49 FR 13661), EPA redesignated Subpart B as Subpart M and revised Subpart M to reinstate equipment and work practice provisions. Therefore, the Cabinet is promulgating this regulation to adopt by reference the federal regulation so that Kentucky's regulation will be identical to the federal regulation and so that the granted delegation of authority to implement the provisions of this NESHAPs regulation will continue and the Cabinet will be able to continue to issue permits to new sources.

In addition, this regulation repeals 401 KAR 57:010 on asbestos emissions so that there will not be an overlapping of requirements for these sources.

Tiering:

Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 57:035. Equipment leaks.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from equipment leaks of volatile hazardous air pollutants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for the control of emissions from equipment leaks of volatile hazardous air pollutants contained in 40 CFR 61, Subpart V, made effective by Federal Register 49 FR 23512, June 6, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart V are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart V, limits emissions of volatile hazardous air pollutants from specified new and existing equipment that operates in volatile hazardous air pollutant service (equipment that contains or contacts a fluid that is at least ten (10) percent by weight a volatile hazardous air pollutant). The types of equipment include: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or line valves, flanges and other connectors, product accumulator vessels, and control systems as may be required. This regulation provides the work practice, equipment, and other standards for all volatile hazardous air pollutants.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on National Emission Standard for Hazardous Air Pollutants (NESHAPs) for equipment leaks of volatile hazardous air pollutants, 40 CFR 61, Subpart V. The federal regulation applies to certain equipment that contains or contacts a fluid that is at least ten percent by weight a volatile hazardous air pollutant (VHAP). At this time, only benzene is defined to be a VHAP. Available information indicates that there are presently no sources in Kentucky to which this regulation applies, however, sources are subject to the regulation for equipment leaks of benzene, 401 KAR 57:040. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 61.247.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.
(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: In the Federal Register of June 6, 1984 (49 FR 23512), U.S. EPA promulgated a national emission standard for hazardous air pollutants (NESHAPs) limiting emissions of volatile hazardous air pollutants (VHAP) from specified equip-

ment (40 CFR 61, Subpart V). The federal regulation provides the equipment, work practice and other standards for equipment which contains or contacts a liquid that is at least ten percent by weight a volatile hazardous air pollutant (VHAP). This regulation will be used in conjunction with other regulations in 40 CFR 61 which will define the pollutant of concern. U.S. EPA has presently only defined benzene as a volatile hazardous air pollutant, in 40 CFR 61, Subpart J. As EPA promulgates new regulations to define other pollutants as VHAPs, the Cabinet will also adopt those regulations. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NESHAPs and issue permits to new sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 57:040. Equipment leaks of benzene.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of equipment leaks of benzene.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for equipment leaks of benzene contained in 40 CFR 61, Subpart J, made effective by Federal Register 49 FR 23512, June 6, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart J are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart J, limits emissions from certain new and existing equipment in benzene service (equipment containing materials with a benzene concentration of ten (10) percent or more by weight). The standards shall not apply to equipment located in process units that produce benzene or benzene mixtures at coke by-product plants or at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year or less.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on National Emission Standards for Hazardous Air Pollutants (NESHAPs) for equipment leaks of benzene 40 CFR 61, Subpart J. The federal regulation applies to specified new and existing equipment in benzene service (equipment containing materials with a benzene concentration of ten percent or more by weight). This regulation shall not apply to equipment located in process units that produce benzene or benzene mixtures at coke by-product plants or at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year or less. Two sources (B. F. Goodrich (072-2600-0004) and Ashland Oil Incorporated (103-0340-0004)) have been identified as being subject to this regulation, and other sources may be subject to the regulation. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources and any new sources, should any be constructed.
(a) Direct and indirect costs or savings to those affected: One of the sources affected by this regulation has filed applicable reports with U.S. EPA pursuant to 40 CFR 61.247 and has requested a waiver for its flare pilot flame monitor. Discussion with a representative of the other source indicates that the source is not immediately aware of any costs associated with the regulation. Since both sources will be complying with the federal regulation, no additional costs will be incurred by Kentucky promulgating this regulation. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: The reporting and recordkeeping requirements appear in 40 CFR 61, Subpart V. The types of information required to be reported include: the types of equipment, methods of compliance with the standard and number of valves in which leaks were detected. Also, new plants will be required to apply for construction and operating permits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036. Also, the Division will review the reports required to be submitted by the sources.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above. Also, the Division will review the reports required to be submitted by the sources.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(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: In the Federal Register of June 6, 1984 (49 FR 23512), U.S. EPA promulgated a national emission standard for hazardous air pollutants (NESHAPs) limiting emissions of benzene from specified new and existing equipment in benzene service (equipment containing materials with a benzene concentration of ten (10) percent or more by weight). The regulation does not apply to equipment located in process units that produce benzene or benzene mixtures at coke by-product plants or at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year or less. Equipment covered by the standard includes new and existing valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, pipeline flanges, product accumulator vessels, and closed vent systems and control devices used to comply with the standard. The standard includes work practices and other requirements. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NESHAPs and issue permits to new sources.

This regulation is used in conjunction with 40 CFR 61, Subpart V to provide standards for the control of benzene from equipment leaks. Subpart J defines what facilities are subject to the regulation on benzene and Subpart V provides the equipment, work practice, and other standards for all volatile hazardous air pollutants. Presently, only the benzene emissions are regulated.

Tiering:

Was tiering applied? Yes. This regulation does not apply to equipment at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year or less.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:036. New sulfuric acid manufacturing plants.

RELATES TO: KRS 224.320, 224.330, 224.340

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Reources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new sulfuric acid manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new sulfuric acid manufacturing plants contained in 40 CFR 60, Subpart H, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, and as amended by Federal Register 48 FR 44700, September 29, 1983, and 48 FR 48669, October 20, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart H are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart H, as amended, limits emissions of sulfur dioxide and sulfuric acid mist from new sulfuric acid production units that commenced construction or modification after August 17, 1971.

Section 4. Availability. Copies of the Code of Federal REgulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:035, New sulfuric acid plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 12, 1984

FILED WITH LRC: October 15, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for sulfuric acid manufacturing plants, 40 CFR 60, Subpart H. The federal regulation applies to all new sulfuric acid manufacturing plants that commenced construction or modification after August 17, 1971. The federal regulation was amended in 1983 to allow specific sources to use alternative emission monitoring and test method procedures. Available in-

formation indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: None on present sources. New plants will be required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and the existing source and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Review (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or existing sources with emissions greater than 100 tons per year where NSR applies and 100 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of December 23, 1971 (36 FR 24877), and June 14, 1974 (39 FR 20794), U.S. EPA promulgated a new source performance standard (NSPS), 40 CFR 60, Subpart H, limiting emissions from sulfuric acid manufacturing plants. The cabinet was delegated the authority to enforce the provisions of that regulation based on the state's regulation 401 KAR 59:035. EPA amended the regulation September 29, 1983 (48 FR 44700), and October 20, 1983 (48 FR 48669), to allow specific sources to use alternative sampling and test method procedures. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue, but the regulation will not be more stringent than the federal regulation. In addition, this regulation repeals the present regulation on new sulfuric acid plants (401 KAR 59:035) so that there will not be an overlapping of requirements for these sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:049. New petroleum refinery equipment leaks.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from leaks in new petroleum refinery equipment.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for leaks in new petroleum refinery equipment contained in 40 CFR 60, Subpart GGG, made effective by Federal Register 49 FR 22606, May 30, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart GGG are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart GGG, limits emissions of volatile organic compounds from all affected facilities in petroleum refineries that commenced construction, modification, or reconstruction after January 4, 1983. There are two (2) types of affected facilities. Each refinery compressor in volatile organic compound service is one (1) type of affected facility. The second type is the group of all the equipment within a process unit. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:048, Leaks from new petroleum refinery equipment, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for petroleum refinery equipment leaks, 40 CFR 60, Subpart GGG. The federal regulation applies to all affected facilities in petroleum refineries that commenced construction, modification, or reconstruction after January 4, 1983. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

While there are petroleum refineries in Kentucky, not all of them have constructed or modified since January 4, 1983. If any of these should modify or construct, then the NSPS and this regulation would apply to those sources. Available information indicates three petroleum refineries in Kentucky may be affected.

(a) Direct and indirect costs or savings to those affected: The cost of volatile organic compounds (VOC) emission reduction systems will vary according to the petroleum product being produced, production equipment, plant layout, geographic location, and company preferences and policies. Cost estimates provided by the U.S. EPA are not specific to Kentucky's sources, but will be given in this document as an estimate. Implementation of the NSPS standards would result in an approximate cost effectiveness of $130/Mg of VOC emission reduction. However, since each source is required to comply with the provisions of the NSPS, regardless of what agency is enforcing the regulation (EPA or Kentucky), there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.486 and 40 CFR 60.487.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new and modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of May 30, 1984 (49 FR 22606), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from leaks in new petroleum refinery equipment. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

In addition, this regulation repeals 401 KAR 59:048 on leaks from new petroleum refinery equipment so that there will not be an overlapping of requirements for these sources. 401 KAR 59:048 applies to petroleum refinery equipment commenced on or after February 4, 1981. This new regulation will apply to all affected facilities in petroleum refineries commenced after January 4, 1983, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:099. New bulk gasoline terminals.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new bulk gasoline terminals.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new bulk gasoline terminals contained in 40 CFR 60, Subpart XX, made effective by Federal Register 48 FR 37590, August 18, 1983, and as amended by Federal Register 48 FR 56580, December 22, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart XX are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart XX, limits emissions of total organic compounds from all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks that commenced construction, modification, or reconstruction after December 17, 1980. A bulk gasoline terminal is defined to be any gasoline facility which receives gasoline by pipeline, ship, or barge, and has a gasoline throughput greater than 75,700 liters per day. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:100, New loading facilities at bulk gasoline terminals, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for bulk gasoline terminals, 40 CFR 60, Subpart XX. The federal regulation applies to all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks that commenced construction, modification, or reconstruction after December 17, 1980. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation. Cost estimates provided with the NSPS give the cost effectiveness for various bulk terminal model plant cases as ranging from a savings to a cost effectiveness of $6,000/Mg. The costs to the for-hire tank truck industry are given as $6,400 per tank truck for bottom loading and vapor recovery retrofitting ($3,000 per tank truck for addition of vapor recovery equipment only) plus maintenance and testing costs.
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: New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.505.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.
(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: In the Federal Register of August 18, 1983 (48 FR 37590), and as

amended by Federal Register 48 FR 56580, December 22, 1983, U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of total organic compounds from new bulk gasoline terminals. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

In addition, this regulation repeals 401 KAR 59:100 on new loading facilities at bulk gasoline terminals so that there will not be an overlapping of requirements for these sources. 401 KAR 59:100 applies to loading facilities at a bulk gasoline terminal commenced on or after June 29, 1979. This new regulation will apply to all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks commenced after December 17, 1980, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? Yes. Bulk gasoline terminal is defined to mean any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:131. New wet-process phosphoric acid plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new wet-process phosphoric acid manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new wet-process phosphoric acid plants contained in 40 CFR 60, Subpart T, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart T are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart T, limits fluoride emissions from new wet-process phosphoric acid plants which commence construction or modification after October 22, 1974. sources which have a design capacity of less than or equal to fifteen (15) tons per calendar day of equivalent phosphorus pentoxide feed are exempt from the provisions of this regulation.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:130, Phosphate fertilizer industry; new wet-process phosphate acid plants, is hereby repealed.

CHAROLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for wet-process phosphoric acid plants, 40 CFR 60, Subpart T. The federal regulation applies to all wet-process phosphoric acid plants that commenced construction or modification after October 22, 1974. There are no sources in Kentucky which are subject to this regulation. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation allows the state to issue permits to sources without being more stringent than the federal regulations.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: Plants will be required to apply for construction and operating permits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to

have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state agency to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Review (NRS) (401 KAR 51:052) may be overlapping since those regulations *may* require more stringent emission limitations on new or existing sources with emissions greater than 100 tons per year where NSR applies and 100 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the *Federal Register* of August 6, 1975 (40 FR 33154), U.S. EPA promulgated a new source performance standard (NSPS) limiting fluoride emmissions from new wet-process phosphoric acid plants. The cabinet was delegated the authority to enforce the provision of the federal regulation. In 1983, EPA amended the regulation to exclude plants with a capacity of 15 tons or less of equivalent phosphorus pentoxide feed per day (48 FR 7129, February 17, 1983). The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue, but the regulation will not be more stringent than the federal regulation. In addition, this regulation repeals the present regulation on wet-process phosphoric acid plants (401 KAR 59:130) so that there will not be a duplication of requirements for these sources.

Tiering:
Was tiering applied? Yes. This regulation applies to those wet-process phosphoric acid plants which have a design capacity of greater than fifteen (15) tons per day of equivalent phosphoric pentoxide feed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:136. New superphosphoric acid plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new superphosphoric acid manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new superphosphoric acid plants contained in 40 CFR 60, Subpart U, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart U are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart U, limits fluoride emissions from new superphosphoric acid plants which commence construction or modification after October 22, 1974. Sources which have a design capacity of less than or equal to fifteen (15) tons per calendar day of equivalent phosphorus pentoxide feed are exempt from the provisions of this regulation.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:135, Phosphate fertilizer industry; new superphosphoric acid plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for superphosphoric acid plants, 40 CFR 60, Subpart U. The federal regulation applies to all superphosphoric acid plants that commenced construction or modification after October 22, 1974. There are no sources in Kentucky which are subject to this regulation. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation allows the state to issue permits to sources without being more stringent than the federal regulations.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: Plants will be required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that any new sources will be able to work with the state agency to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of August 6, 1975 (49 FR 33155), U.S. EPA promulgated a new source performance standard (NSPS) limiting fluoride emissions from new superphosphoric acid plants. The Cabinet was delegated the authority to enforce the provision of the federal regulation. In 1983, EPA amended the regulation to exclude plants with a capacity of 15 tons or less of equivalent phosphorus pentoxide feed per day (48 FR 7129, February 17, 1983). The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue, but the regulation will not be more stringent than the federal regulation.

In addition, this regulation repeals the present regulation on superphosphoric plants (401 KAR 59:135) so that there will not be a duplication of requirements for these sources.

Tiering:
Was tiering applied? Yes. This regulation applies to those superphosphoric acid plants which have a design capacity of greater than 15 tons per day of equivalent phosphoric pentoxide feed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:141. New diammonium phosphate plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new diammonium phosphate manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new diammonium phosphate plants contained in 40 CFR 60, Subpart V, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart V are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart V, limits fluoride emissions from new diammonium phosphate plants which commence construction or modification after October 22, 1974. Sources which have a design capacity of less than or equal to fifteen (15) tons per calendar day of equivalent phosphorus pentoxide feed are exempt from the provisions of this regulation.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:140, Phosphate fertilizer industry; new diammonium phosphate plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for diammonium phosphate plants, 40 CFR 60, Subpart V. The federal regulation applies to all diammonium phosphate plants that commenced construction or modification after October 22, 1974. There are no sources in Kentucky which are subject to this regulation. Any new source would be sub-

ject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation allows the state to issue permits to sources without being more stringent than the federal regulations.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: Plants will be required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that any new sources will be able to work with the state agency to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of August 6, 1975 (40 FR 33155), U.S. EPA promulgated a new source performance standard (NSPS) limiting fluoride emissions from new diammonium phosphate plants. The Cabinet was delegated the authority to enforce the provision of the federal regulation. In 1983, EPA amended the regulation to exclude plants with a capacity of 15 tons or less of equivalent phosphorus pentoxide feed per day (48 FR 7129, February 17, 1983). The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue, but the regulation will not be more stringent than the federal regulation.

In addition, this regulation repeals the present regulation on diammonium phosphate plants (401 KAR 59:140) so that there will not be a duplication of requirements for these sources.

Tiering:
Was tiering applied? Yes. This regulation applies to those diammonium phosphate plants which have a design capacity of greater than 15 tons per day of equivalent phosphoric pentoxide feed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:146. New triple superphosphate plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new triple superphosphate manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new triple superphosphate plants contained in 40 CFR 60, Subpart W, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart W are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart W, limits fluoride emissions from new triple superphosphate plants which commence construction or modification after October 22, 1974. Sources which have a design capacity of less than or equal to fifteen (15) tons per calendar day of equivalent phosphorus pentoxide feed are exempt from the provisions of this regulation.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:145, Phosphate fertilizer industry; new triple superphosphate plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing

to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for triple superphosphate plants, 40 CFR 60, Subpart W. The federal regulation applies to all triple superphosphate plants that commenced construction or modification after October 22, 1974. There are no sources in Kentucky which are subject to this regulation. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation allows the state to issue permits to sources without being more stringent than the federal regulation.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: Plants will be required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that any new sources will be able to work with the state agency to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations *may* require more stringent emission limitations on new sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the *Federal Register* of August 6, 1975 (40 FR 33156), U.S. EPA promulgated a new source performance standard (NSPS) limiting fluoride emissions from new triple superphosphate plants. The cabinet was delegated the authority to enforce the provision of the federal regulation. Om 1983. EPA amended the regulation to exclude plants with a capacity of 15 tons or less of equivalent phosphorus pentoxide feed per day (48 FR 7129, February 17, 1983). The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue, but the regulation will not be more stringent than the federal regulation. In addition, this regulation repeals the present regulation on triple superphosphate plants (401 KAR 59:145) so that there will not be a duplication of requirements for these sources.

Tiering:

Was tiering applied? Yes. This regulation applies to those triple superphosphate plants which have a design capacity of greater than 15 tons per day of equivalent phosphoric pentoxide feed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:171. New lime plants.

RELATES TO: KRS 224.320, 224.330, 224.340

PURSUANT TO: KRS 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 control of emissions from new lime manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new lime manufacturing plants contained in 40 CFR 60, Subpart HH, revised by Federal Register 49 FR 18080, April 26, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart HH are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart HH, as revised, limits emissions of particulate matter from all new lime manufacturing plants that commenced construction,

modification or reconstruction after May 3, 1977. A lime manufacturing plant is defined to be any plant which uses a rotary lime kiln to produce lime product from limestone by calcination.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:170, New lime manufacturing plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for lime manufacturing plants, 40 CFR 60, Subpart HH, as revised. The federal regulation applies to all new lime manufacturing plants that commenced construction, modification, or reconstruction after May 3, 1977. Available information indicates that there is one source (Black River Lime Company, 079-3260-0002) in Kentucky to which this regulation applies but the federal regulation would apply to this source, if the state's regulation did not. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources.
(a) Direct and indirect costs or savings to those affected: The source to which this regulation applies will be issued a new operating permit after completion of current construction. The changes imposed by this federal regulation are not expected to adversely affect the source, and may relax the standards for the source. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: No additional requirements for the present source. New plants will be required to apply for construction and operating permits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The following applies for the source which is affected and for any sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and the existing source and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR and PSD apply. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.
(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: In the Federal Register of March 7, 1978 (43 FR 9453), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of particulate matter from new lime manufacturing plants. The Cabinet was granted delegation of authority to enforce the provisions of the federal regulation, based on the state's regulation 401 KAR 59:170. The U.S. Court of Appeals remanded the regulation back to the EPA for further review. In response to the Court's directive, EPA reviewed and revised the regulation, effective April 26, 1984 (49 FR 18080). The revisions represent a relaxation of the standards. The Cabinet is promulgating this regulation to adopt by reference the revised federal regulation so that the granted delegation of authority to implement the provisions of the NSPS will continue without being more stringent than the federal regulation.
In addition, this regulation repeals the present regulation on new lime manufacturing plants (401 KAR 59:170) so that there will not be an overlapping of requirements for these sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:196. New metal furniture coating operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new metal furniture coating operations.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new metal furniture surface coating operations contained in 40 CFR 60, Subpart EE, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart EE are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart EE, limits emissions of volatile organic compounds from all new metal furniture surface coating operations that commenced construction, modification or reconstruction after November 28, 1980. A metal furniture surface coating operation is defined to be the system used to apply and dry or cure an organic coating on the surface of the metal furniture part or product. The surface coating operation may be a prime coat or a top coat operation and includes the coating application station, flash-off area, and curing oven. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:195, New metal furniture surface coating operations, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for metal furniture surface coating operations, 40 CFR 60, Subpart EE. The federal regulation applies to all new metal furniture surface coating operations that commenced construction, modification, or reconstruction after November 28, 1980. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.315.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of October 29, 1982 (47 FR 49287), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from new metal furniture surface coating operations. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

In addition, this regulation repeals 401 KAR 59:195 on new metal furniture coating operations so that there will not be an overlapping of requirements for these sources. 401 KAR 59:195 applies to specific-sized metal furniture coating operations commenced on or after June 29, 1979. This new regulation will apply to all metal furniture coating operations commenced after November 28, 1980, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:201. New large appliance coating operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions for new large appliance coating operations.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new large appliance surface coating operations contained in 40 CFR 60, Subpart SS, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance required in 40 CFR 60, Subpart SS are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart SS, limits emissions of volatile organic compounds from new large appliance surface coating operations that commenced construction, modification or reconstruction after December 24, 1980. Coating operations at manufacturers of the following metal products are subject to the standard: ranges, ovens (conventional and microwave), refrigerators, freezers, washers, dryers, dishwashers, water heaters and trash compactors. The standards represent best demonstrated technology for this coating industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:200, New large appliance surface coating operations, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for large appliance surface coating operations, 40 CFR 60, Subpart SS. The federal regulation applies to all large appliance coating operations that commenced construction, modification, or reconstruction after December 24, 1980. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

There are several manufacturers of large applicances in Kentucky, however, the majority of them have not constructed or modified since December 24, 1980. If any of these should modify or construct, then the NSPS and this regulation would apply to those sources. One source (Roper Outdoor Products, 101-4040-0021) is now coating and producing ranges and stoves and this will be subject to this regulation. Another source (Hobart Corporation, 103-2860-0012) may be subject to this regulation.

(a) Direct and indirect costs or savings to those affected: Costs to the affected sources will depend on the type of coatings (primecoat or topcoat; waterborne, organic-solvent-borne, powder, or high-solids), the method used for applying the coatings (dip, flow or spray coating, or electrodeposition (EDP), for example), and the method of control (carbon absorption or incineration). Cost estimates provided with the federal NSPS are not specific to Kentucky's sources, but will be given in this document as an estimate. The maximum additional capital investment due to the regulation is given to be 21.2 percent of the baseline capital requirements (or $214,000 for a baseline capital requirement of $1,013,400). The maximum price impact due to the regulation is zero 0.7 percent. However, since each source is required to comply with the provisions of the NSPS, regardless of what agency is enforcing the regulation (EPA or Kentucky), there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: Plants will be required to apply for construction and operating per-

mits. The reporting and recordkeeping requirements appear in 40 CFR 60.455.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state agency to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of October 27, 1982 (47 FR 47785), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from new large appliance surface coating operations. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

In addition, this regulation repeals 401 KAR 59:200 on new large appliance surface coating operations so that there will not be an overlapping of requirements for these sources. 401 KAR 59:200 applies to specific-sized large appliance coating operations commenced on or after June 29, 1979. This new regulation will apply to all large appliance surface coating operations commenced after December 24, 1980, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where tiering is not allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:213. New publication rotogravure printing operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 244.033 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 control of emissions from new publication rotogravure printing operations in the graphic arts industry.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new publication rotogravure printing operations contained in 40 CFR 60, Subpart QQ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart QQ are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart QQ, limits emissions of volatile organic compounds from all new rotogravure printing presses that commenced construction, modification, or reconsturction after October 28, 1980. The provisions of this regulation shall not apply to proof presses. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHAROLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for publication rotogravure printing operations, 40 CFR 60, Subpart QQ. The federal regulation applies to all new publication rotogravure printing operations that commenced construction, modification, or reconstruction after October 28,

1980. One source may be subject to this regulation. However, this source (and any new sources) would also be subject to the federal regulation, therefore, there is no disadvantage caused by Kentucky promulgating this regulation. Promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Cost information provided with the federal regulation indicates that there are increased capital investment costs associated with the promulgated standards for the entire industry. However, the solvent recovery method would provide a net profit (negative annualized costs) and positive return on investments. The two (2) percent incremental increase in initial capital costs would not restrict industry growth, and there would be no significant price increases for publication rotogravure products, due to the promulgated standards.

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: Plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.434.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations *may* require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the *Federal Register* of November 8, 1982 (47 FR 50649), U.S. EPA promulgated a new source performance standard (NSPS), limiting emissions of volatile organic compounds (VOCs) from new publication rotogravure printing operations. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources. In addition, 401 KAR 59:212 on new graphic arts facilities using rotogravure and flexography is being amended to delete the provisions which apply to publication of rotogravure printing operations so that there will not be an overlapping of requirements for these sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identified to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:216. New beverage can coating operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new beverage can coating operations.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new beverage can surface coating operations contained in 40 CFR 60, Subpart WW, made effective by Federal Register 48 FR 38737, August 25, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart WW are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart WW, limits emissions of volatile organic compounds from all new two (2) piece beverage can surface coating operations that commenced construction, modification, or reconstruction after November 26, 1980. A two (2) piece beverage can is defined to be any two (2) piece steel or aluminum container in which soft drinks or beer (including malt liquor) are packaged. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:215, New can surface coating operations, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for beverage can surface coating operations, 40 CFR 60, Subpart WW. The federal regulation applies to all new beverage can surface coating operations that commenced construction, modification, or reconstruction after November 26, 1980. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.
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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.495.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.
(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: In the Federal Register of August 25, 1983 (43 FR 38737), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from new beverage can surface coating operations. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.
In addition, this regulation repeals 401 KAR 59:215 on new can coating operations so that there will not be an overlapping of requirements for these sources. 401 KAR 59:215 applies to specific-sized can coating operations commenced on or after June 29, 1979. This new regulation will apply to all beverage can coating operations commenced after November 26, 1980, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:221. New metal coil coating operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new metal coil coating operations.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new metal coil surface coating operations contained in 40 CFR 60, Subpart TT, published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart TT are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart TT, limits emissions of volatile organic compounds from all new metal coil surface coating operations that commenced construction, modification, or reconstruction after January 5, 1981. A metal coil surface coating operation is defined to be any application system used to apply an organic coating to the surface of any continuous metal strip that is packaged in a roll or coil. Compliance can be achieved by any of four (4) approaches for each affected facility. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. 401 KAR 59:220, New coil surface coating operations, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for metal coil surface coating operations, 40 CFR 60, Subpart TT. The federal regulation applies to all new metal coil surface coating operations that commenced construction, modification, or reconstruction after January 5, 1981. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation. Cost analysis provided by EPA for the federal regulation shows that the price of coil coated metal could increase by a maximum of 4.1%. This cost increase would occur whether or not Kentucky promulgated this regulation

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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.465.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of November 1, 1982 (47 FR 49612), and as subsequently amended, U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from new metal coil surface coating operations. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

In addition, this regulation repeals 401 KAR 59:220 on new metal coil coating operations so that there will not be an overlapping of requirements for these sources. 401 KAR 59:220 applies to specific-sized metal coil coating operations commenced on or after June 29, 1979. This new regulation will apply to all metal coil can coating operations commenced after January 5, 1981, locating anywhere in the Commonwealth.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:275. New grain elevators.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new grain elevators.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new grain elevators contained in 40 CFR 60, Subpart DD, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart DD are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart DD, limits emissions of particulate matters from new grain terminal and new grain storage elevators that commenced construction, modification, or reconstruction after August 3, 1978. A grain terminal elevator is defined to be any grain elevator which has a permanent storage capacity of more than 88,100 cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries and livestock feed lots. A grain storage elevator is defined to be any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill, rice mill or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 cubic meters (ca. one (1) million bushels).

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for grain elevators, 40 CFR 60, Subpart DD. The federal regulation applies to specified new grain terminal and grain storage elevators that commenced construction, modification, or reconstruction after August 3, 1978. The grain terminal elevator to which this regulation applies is each grain terminal elevator with a permanent storage capacity of more than 88,100 cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, breweries and livestock feedlots. The grain storage elevator to which this regulation applies is each grain storage elevator at any wheat flour mill, wet corn mill, dry corn mill, rice mill or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 cubic meters (ca. one million bushels). Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation. Information supplied by EPA indicates that the promulgated standards will have no significant effect on the supply and demand for grain products, or on the growth of the domestic grain industry.
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: None on present sources. New plants will be required to apply for construction and operating permits.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: Any new source will be inspected and the costs will be absorbed as a part of the operating budget for the Division's normal day-to-day activities.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the

delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of August 3, 1978 (43 FR 34347), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of particulate matter from new grain elevators. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

Tiering:
Was tiering applied? Yes. This regulation applies to any grain terminal elevator that has a permanent storage capacity of greater than 2.5 million bushels and any grain storage elevator at any wheat flour mill, wet corn mill, dry corn mill, rice mill or soybean oil extraction plant that has a permanent storage capacity of one million bushels.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:280. New synthetic fiber production facilities.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new synthetic fiber production facilities.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new synthetic fiber production facilities contained in 40 CFR 60, Subpart HHH, made effective by Federal Register 49 FR 13651, April 5, 1984, and as amended by Federal Register 49 FR 18096, April 27, 1984, is hereby adopted and filed herein by reference.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart HHH, limits emissions of volatile organic compounds from new synthetic fiber production facilities that produce more than 500 megagrams of fiber per year, that commenced construction or reconstruction after November 23, 1982. The synthetic fiber production facilities are those that use an organic solvent in manufacturing the formed fiber. Facilities which produce the following types of fibers are subject to this regulation: acrylic, modacrylic, cellulose acetate, spandex, and other similar types.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation New Source Performance Standards (NSPS) for new synthetic fiber facilities, 40 CFR 60, Subpart HHH. The federal regulation applies to all synthetic fiber production facilities that commenced construction or reconstruction after November 23, 1982. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Background information provided with the federal regulation indicates that the net annualized cost of implementing the provisions of this regulation would be about $0.2 million for a single plant, and the capital costs would range from $4.2 to $5.5 million. However, future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting requirements appear in 40 CFR 60.604.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation is identical to the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of April 5, 1984 (49 FR 13651), and as amended by 49 FR 18096, April 27, 1984, U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from new synthetic fiber production facilities that utilize an organic solvent in manufacturing the formed fiber. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

Tiering:
Was tiering applied? Yes. This regulation applies to all solvent-spun synthetic fiber processes that produce more than 500 megagrams of fiber per year.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:300. New pressure sensitive tape and label surface coating opertions.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 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 control of emissions from new pressure sensitive tape and label surface coating operations.

Section 1. General. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new pressure sensitive tape and label surface coating operations contained in 40 CFR 60, Subpart RR, made effective by Federal Register 48 FR 48375, October 18, 1983, is hereby adopted and filed herein by reference. The reference methods required in 40 CFR 60, Subpart RR are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart RR, limits emissions of volatile organic compounds from all new pressure sensitive tape and label surface coating lines that commenced construction, modification, or reconstruction after December 30, 1980. A coating line means any number or combination of adhesive, release or precoating applicators, flashoff areas, and ovens which coat a continuous web, located between a web unwind station and a web rewind station, to produce pressure sensitive tape and label materials. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHAROLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for pressure sensitive tape and label surface coating operations, 40 CFR 60, Subpart RR. The federal regulation applies to all new pressure sensitive tape and label surface coating lines that commenced construction, modification, or reconstruction after December 30, 1980. There are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. Future sources will have the same controls required in Kentucky as anywhere else in the country; therefore, there are no

economic disadvantages to Kentucky caused by promulgating this regulation.

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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.445 and 40 CFR 60.447.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Review (NRS) (401 KAR 51:052) may be overlapping since those regulations *may* require more stringent emission limitations on new and modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the *Federal Register* of October 18, 1983 (48 FR 48375), U.S. EPA promulgated a new source performance standard (NSPS), limiting emissions of volatile organic compounds (VOCs) from new pressure sensitive tape and label surface coating operations. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

Tiering:

Was tiering applied? Yes. Any affected facility which inputs to the coating process 45 Mg (49.6 tons) of VOC or less per 12 month period is not subject to the emission limits of 40 CFR 60.442(a), however, the affected facility is subject to the requirements of all other applicable sections of the federal regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:305. New synthetic organic chemical manufacturing industry equipment leaks.

RELATES TO: KRS 224.320, 224.330, 224.340

PURSUANT TO: KRS 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 control of emissions from leaks from new synthetic organic chemical manufacturing industry equipment.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new synthetic organic chemical manufacturing industry equipment leaks contained in 40 CFR 60, Subpart VV, made effective by Federal Register 48 FR 48335, October 18, 1983, and as amended by Federal Register 49 FR 22607, May 30, 1984, and Federal Register 49 FR 26738, June 29, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart VV are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart VV, limits emissions of volatile organic compounds from equipment leaks in the synthetic organic chemical manufacturing industry process units that commenced construction, modification, or reconstruction after January 5, 1981. Synthetic organic chemicals manufacturing industry is defined to be the industry that produces, as intermediates or final products, one (1) or more of the chemicals listed. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 12, 1984

FILED WITH LRC: October 15, 1984 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation is scheduled for November 27, 1984, at 10 a.m., in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending the hearing should contact in writing: William Coakley, Program Development Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemical manufacturing industry (SOCMI), 40 CFR 60, Subpart VV. The federal regulation applies to equipment leaks in SOCMI process units that commenced construction, modification, or reconstruction after January 5, 1981. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

While there are SOCMI sources in Kentucky, not all of them have constructed or modified since January 5, 1981. If any of these should modify or construct, then the NSPS and this regulation would apply to those sources. Available information indicates seven SOCMI sources in Kentucky may be affected. Any affected facility that has a design capacity to produce less than 1000 Mg/yr (1102.3 tons/year) is exempt from the standards specified in the regulation.

(a) Direct and indirect costs or savings to those affected: Costs to the affected sources will vary according to the chemical product being produced, production equipment, plant layout, geographical location, and company preference and policies. Cost estimates provided by the U.S. EPA are not specific to Kentucky's sources, but will be given in this document as an estimate. Typical net annualized costs for three model units composed of varying numbers of equipment components are $8,600, $18,600 and $46,400 per year. However, since each source is required to comply with the provisions of the NSPS, regardless of what agency is enforcing the regulation (EPA or Kentucky), there are no economic disadvantages to Kentucky caused by promulgating this regulation.

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: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.486 and 40 CFR 60.487.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The Division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

(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 since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on Prevention of Significant Deterioration (PSD) (401 KAR 51:017) and New Source Reviews (NSR) (401 KAR 51:052) may be overlapping since those regulations may require more stringent emission limitations on new or modified sources with emissions greater than 100 tons per year where NSR applies and 250 tons per year where PSD applies. In any case, the regulation with the more stringent emission limitation would apply to the source for PSD and NSR purposes.

(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: In the Federal Register of October 18, 1983 (43 FR 48335), and as amended in the Federal Registers of May 30, 1984 (49 FR 22607), and June 29, 1984 (49 FR 26738), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOCs) from equipment leaks in new SOCMI process units. The Cabinet is promulgating this regulation to adopt by reference the federal regulation so that the Cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

Tiering:
Was tiering applied? Yes. This regulation applies to any affected facility which has the design capacity to produce 1,000 Mg/yr (1102.3 tons/yr) or more.

TRANSPORTATION CABINET
Department of Fiscal Management
Division of Toll Facilities

600 KAR 2:040. Appearance requirements and uniforms of division of toll facilities' employees.

RELATES TO: KRS 12.040, 12.080, Chapters 18A, 174

PURSUANT TO: KRS 12.040, 12.080, 174.080

NECESSITY AND FUNCTION: Because the toll collectors and the maintenance personnel on the Commonwealth turnpikes and toll roads are in positions of constant public attention and represent the Commonwealth to much of the traveling public, the Transportation Cabinet provides uniforms for their use. This administrative regulation is adopted to specify the responsibilities of the employees in maintaining their uniforms and personal appearance so that they are a credit to the Commonwealth.

Section 1. Care and Maintenance of Uniforms. (1) The Transportation Cabinet is responsible for providing, at its expense, an ample supply of uniforms to and instructing toll collectors and toll facilities maintenance personnel in the proper wearing and use of the uniforms issued to said

personnel. The cabinet is responsible for making necessary initial alterations to the uniforms.

(2) A uniform must be worn as issued while the employee is on duty. The employee must present a neat and clean appearance.

(3) The employee is responsible for uniform cleaning, pressing and minor repair such as button replacement. The employee is also responsible for any subsequent alterations which have been approved by the Transportation Cabinet.

(4) The employee must not wear the uniform in nonduty activities other than travel to and from the employee's work station.

(5) An employee may exchange a nonfitting uniform which is still in good condition for another uniform that fits properly.

(6) An employee may without prejudice exchange a uniform that is not capable of conforming to the standards required by this regulation.

Section 2. Damaged or Severely Altered Uniforms. (1) The employee must reimburse the cabinet for uniforms that have been damaged through abuse, neglect, unauthorized alterations or that have been lost or otherwise have been rendered unsuitable for reissue prior to the end of the expected three (3) year life of the uniform. The amount charged for the uniform will be prorated based on its purchase price and the portion of the three (3) years durability expectancy it has been in service.

Section 3. Termination of Employee. In the event an employee resigns or otherwise terminates his employment with the Division of Toll Facilities, the employee shall return all uniforms issued to the employee during the preceeding three (3) years. If any uniform is not returned or is damaged or altered in an unauthorized manner, the employee shall be responsible for such damage or loss sustained by the cabinet. Payment will be based on the age of the uniform, original purchase price and condition of the returned uniform.

Section 4. Personal Appearance and Hygiene of Employees. (1) At work, employees must present a clean, well-groomed appearance. Men's hair must be clean, neatly trimmed and cut so that it will not cover the ears or any portion thereof and so that it will not touch the collar of the uniform dress shirt. Sideburns must not extend below the lowest part of the opening of the ear. "Afro" hairstyles must not be longer than two (2) inches from the scalp.

(2) Beards or goatees are prohibited. Mustaches must be neatly trimmed and must not extend below the corner of the mouth or over the top of the lip.

(3) Women's hair must be clean and be easily maintained and presentable at all times. Women's hair must be styled so as not to obstruct vision.

(4) Fingernails must be clean and neatly trimmed.

(5) Shoes must be black or navy blue, clean and shined.

Section 5. Disciplinary Action. The Transportation Cabinet may take disciplinary action against any uniformed Division of Toll Facilities' employee who violates any provision of this administrative regulation.

GEORGE WOLNITZEK, Commissioner
FLOYD G. POORE, Secretary

APPROVED BY AGENCY: October 9, 1984

FILED WITH LRC: October 9, 1984 at 11:30 a.m.

PUBLLC HEARING SCHEDULED: A public hearing will be held on this administrative regulation on November 26, 1984 at 10 a.m. local prevailing time. The hearing location is the 10th floor conference room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 21, 1984 so notify: Larry E. Moore, Chief Administrative Assistant, 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: 500 employees of the Division of Toll Facilities

(a) Direct and indirect costs or savings to those affected: N/A

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: Allows administrative control of this group of employees

(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: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: Considered not adopting any such regulations but rejected so could have ability to discipline employees for failure to conform to these standards.

(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. All uniformed employees of the division should be treated alike.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 1:120. Rebates and gift certificates.

RELATES TO: KRS 244.050, 244.130, 244.240, 244.500

PURSUANT TO: KRS 241.060

NECESSITY AND FUNCTION: Under the provisions of KRS 244.130, the Alcoholic Beverage Control Board has the authority to regulate alcoholic beverage advertising. KRS 244.050 requires sales of alcoholic beverages to be for "full monetary consideration." Rebates and gift certificates are common tools of modern marketing. This regulation is adopted to allow the industry to use these marketing practices and also insure that the statutory provisions requiring beverages be sold for full monetary consideration are met.

Section 1. Manufacturers and importers of distilled spirits and wine may advertise and promote, by specific brand name and bottle size, distilled spirits and wine for off premises consumption by use of rebates or mail-in certificates wherein the consumer receives a cash refund from the manufacturer or importer, or clearing house acting for the manufacturer or importer, for this purpose, upon submission by the consumer by mail of the requisite proof of purchase.

Section 2. The participation of retail package liquor licensees in the rebate/mail-in-certificate advertising promotion as set forth in Section 1 of this regulation shall be limited to making the necessary rebate coupon or mail-in-certificate available for the consumer, if desired. The retail package liquor licensee may also advertise the availability of such a rebate or mail-in-coupon by means of media conforming with the advertising laws and regulations governing alcoholic beverage advertising. In no manner shall the retail package liquor licensee be reimbursed or credited for such advertising by the manufacturer, importer or clearinghouse.

Section 3. The use of gift certificates in the retail sale of alcoholic beverages for off-premises consumption is permitted provided that no gift certificate redeemable for alcoholic beverages is sold to or redeemed by anyone under twenty-one (21) years of age.

Section 4. Rebates or mail-in-certificates on malt beverages are prohibited.

EDWARD A. FARRIS, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: October 15, 1984
FILED WITH LRC: October 15, 1984 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on the above proposed regulation will be held on Tuesday, November 27, 1984, at 10 a.m., EST, in the Hearing Room of the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky. Unless requests for a public hearing are received, in writing, five (5) working days before the hearing date, the public hearing will be cancelled. Those who may be interested in attending, please contact: Bonnie H. Hall, Secretary to the Board, Alcoholic Beverage Control Board, 123 Walnut, Frankfort, KY. 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. N/A

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

815 KAR 20:055. Water heater devices.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.200
NECESSITY AND FUNCTION: The 1984 General Assembly enacted KRS 318.200 which requires that all retailers, wholesalers and installers forward a list of names and addresses of purchasers along with the serial numbers of the appropriate agency every thirty (30) days. This regulation is to assure the submittal of the information in a format compatible with operating procedures of the department.

Section 1. Manufacturers. Manufacturers shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information when they act in the capacity of a retailer by selling their product directly to the end user. The required information shall be submitted on Form PLB-90 format as shown.

WATER HEATER REPORT FOR
THE COMMONWEALTH OF KENTUCKY

MANUFACTURER

Manufacturer _____
Address _____
City _____ State _____ Zip Code _____
Name _____
Make (Gas) __ (Electric) __ (Oil) __ (Other Fuels) __
Size (Gallons) ____ Serial No. ____ Model No. ____
Purchaser _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

Section 2. Wholesalers. Distributors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-91 format as shown.

WATER HEATER REPORT FOR
THE COMMONWEALTH OF KENTUCKY

DISTRIBUTOR

Manufacturer _____
Name _____
Make (Gas) __ (Electric) __ (Oil) __ (Other Fuels) __

Size (Gallons) ____ Serial No. ____ Model No. ____
Distributor _____
Address _____
City _____ State _____ Zip Code _____
Purchaser _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

Section 3. Retailers and Installing Contractors. Retailers and installing contractors shall submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the required information on Form PLB-92 format as shown.

WATER HEATER REPORT FOR
THE COMMONWEALTH OF KENTUCKY

RETAILER OR INSTALLING CONTRACTOR

Manufacturer _____
Name _____
Make (Gas) __ (Electric) __ (Oil) __ (Other Fuels) __
Size (Gallons) ____ Serial No. ____ Model No. ____
Retailer or Installing Contractor _____
Address _____
City _____ State _____ Zip Code _____
Buyer _____
Address _____
City _____ State _____ Zip Code _____
Date Sold _____

CHARLES A. COTTON, Commissioner
MELVIN H. WILSON, Secretary
APPROVED BY AGENCY: October 4, 1984
FILED WITH LRC: October 9, 1984 at 1:30 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 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 November 20, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl VanCleve
(1) Type and number of entities affected: All persons selling, installing or buying water heater devices.
(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: Completion of form and forwarding to agency.
(2) Effects on the promulgating administrative body: Addition of one clerical person to handle office work.
(a) Direct and indirect costs or savings:
1. First year: $12,000
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Printing and distribution of reporting forms.
(3) Assessment of anticipated effect on state and local revenues: Added revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No 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. N/A

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Commission on Fire Protection Personnel Standards and Education

815 KAR 45:060. Survivor benefits death of paid firefighter.

RELATES TO: KRS Chapter 61
PURSUANT TO: KRS 61.315
NECESSITY AND FUNCTION: KRS 61.315 authorizes the payment of a survivor's benefits of $25,000 to the survivors of a paid firefighter who is killed in the line of duty. These regulations establish the procedures and criteria which shall be utilized to determine the eligibility of survivors of a firefighter killed in the line of duty, to be paid the survivor's benefit.

Section 1. Definitions. As employed in the regulation for determination of eligibility for payment of survivor benefits, the following words and phrases shall have the following meaning:
(1) Paid firefighter. Paid firefighter for the purpose of these regulations shall mean every paid firefighter who is employed by any county, city, metro-government, fire district as established through KRS Chapter 75, or a fire department recognized pursuant to KRS 17.250 which operates and maintains a fire department on a non-profit basis in the interest of the health and safety of the inhabitants of the Commonwealth.
(2) Performance of Duty. A paid firefighter shall be deemed to be acting in the performance of his duties for the purpose of these regulations when engaged in activities of firefighting, fire drills or other related training; rescue or emergency activities; provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.
(a) These activities shall include repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department upon the

authorization of the chief of the fire department or other authorized person in charge or while answering any emergency calls for any purpose or while riding in or upon the fire or emergency apparatus which is owned or used by the fire department or while performing other duties of such fire department as authorized by the jurisdiction which the department serves.

(b) These activities shall include organized meetings related to the fire service and travel to and from such meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.

(3) Active Member. For the purpose of these regulations, an active firefighter is one that is listed on the department roster and participates in the department's training programs and other various activities.

(4) Heart or Circulatory Malfunction. For the purpose of these regulations, heart or circulatory malfunction shall mean myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as described in these regulations.

(5) Death in Performance of Duty. For the purpose of these regulations, death shall mean death which occurs as a direct result of an act or acts in the performance of duty as described in these regulations and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of said duties or the results of illness, sickness or injury caused by the performance of said duties which result in death within twelve (12) months of such stated activities as described elsewhere in these regulations providing death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the above stated causes, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.

(6) Beneficiaries. Benefits shall be paid to the surviving spouse, if no surviving spouse then payment shall be made to the surviving children, if no surviving spouse or children the benefit shall be paid to any dependent parents of the deceased. Benefits paid under these statutes do not accrue to the decendent's estate. If decedent is not survived by an eligible survivor, no benefits shall be paid under KRS 61.315.

(7) Heart or Circulatory Malfunction Limitations. After July 15, 1984, should an individual become an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits should he/she be killed in the line of duty.

(a) Should he/she have been medically diagnosed a having had or receiving any medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from their doctor, that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, their eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 should said firefighter be killed in the line of duty.

(b) After July 15, 1984, should an active member of a fire department be medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, their survivors shall not be eligible to receive benefits from this program in event of the firefighter's death until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of said statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(8) Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for such a request. Should an autopsy be performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished the commission.

(9) Dependents. "Child or children" includes stepchildren, legally adopted children, posthumous children and recognized illegitimate children. "Parent" includes stepparents and parents by adoption.

(10) Commission. Commission for the purpose of these regulations means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

Section 2. Application. (1) Upon the death in the line of duty, as defined by these regulations, of a paid firefighter, the fire department of which he was a member at the time of death shall notify in writing the commission's administrator in the Office of State Fire Marshal, of the death. Upon receipt of such notification, the administrator shall send the proper forms to the notifying fire department in care of the chief as well as the proper forms to the known survivors of the deceased firefighter.

(2) Upon receipt of the forms furnished by the commission, the chief and survivors or their representative shall properly fill out the said forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly filled out forms, a committee of the commission appointed by the chairman of the commission shall review the applications and forward them with their recommendations to the full commission for determination of eligibility. Should there be any questions about the application, the committee and the administrator has the authority to seek clarification of the questions on behalf of the commission.

Section 3. Certification of Payment of Benefits. Upon certification of survivorship rights to the Paid Firefighter's Death Benefit, the sum of $25,000 shall be paid by the state treasurer from the general expenditure fund of the state treasury. The treasurer shall issue a check for the above amount and transmit said check to the commission's administrator for payment to the eligible survivor or survivors.

Section 4. False and Fraudulent Statements. Any person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS Chapter 61.315 or this regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsi-

ble for the return to the state treasury of those funds which were received through these false or fraudulent statements or representations.

Section 5. Appeals. (1) No decision of the commission which negatively affects the eligibility of a survivor to be a recipient of the fund shall be final until said survivor shall have been afforded an opportunity to be heard on the matters.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. Said appeal shall be to the circuit court of the circuit where the controversy originated.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary

APPROVED BY AGENCY: October 9, 1984

FILED WITH LRC: October 9, 1984 at 1:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 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 November 20, 1984, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(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. N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board

902 KAR 20:200. Tuberculosis testing in long term care facilities.

RELATES TO: KRS 215.520 to 215.600, 216B.010 to 216B.131, 216B.990(1)(2)

PURSUANT TO: KRS 216B.040(2), 216B.105

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. KRS 215.520 to 215.590 mandates that nursing homes report cases of tuberculosis. The purpose of this regulation is to establish licensure requirements concerning uniform procedures for the identification and control of tuberculosis in skilled nursing facilities, intermediate care facilities, nursing homes, and personal care homes. These procedures are necessary to minimize the transmission of tuberculosis infection among the staff and residents of such facilities.

Section 1. Definitions. (1) "Induration" means a firm area in the skin which develops as a reaction to injection tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(2) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(3) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Admission of Patients under Treatment for Pulmonary Tuberculosis Disease. No licensee shall admit a person under medical treatment for pulmonary tuberculosis disease unless there is documentation of three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission and the patient is considered non-infectious by a licensed physician.

Section 3. Tuberculin Skin Testing of Residents. For residents entering a facility, no skin testing is required if a previous documented skin test has shown ten (10) or more millimeters of induration or if the resident is currently receiving or has completed one (1) year of prohylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. For all other residents, however, skin testing is required upon admission to the facility. For such residents whose initial skin test shows zero (0) through nine (9) millimeters of induration, two (2) step skin testing is required. The skin test status of all residents must be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record. The front cover of the medical record shall be labeled in a conspicuous manner with the notation "PPD+" for all residents with a reaction of ten (10) or more millimeters of induration.

Section 4. X-raying of Residents. All residents found on admission testing to have a skin test of ten (10) or more millimeters of induration shall receive a chest x-ray, unless a chest x-ray done within two (2) months prior to admis-

sion showed no evidence of tuberculosis disease or the resident can document that he has previously had one (1) year of prophylactic treatment with isoniazid.

Section 5. Monitoring of Residents with a Skin Test of Ten (10) or More Millimeters of Induration. Residents with a skin test of ten (10) or more millimeters of induration shall be monitored for development of pulmonary symptoms such as cough, sputum production or chest pain. If such symptoms develop and persist of three (3) weeks or longer, a chest x-ray shall be taken and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky, for tuberculosis culture and smear.

Section 6. Monitoring of Residents with a Skin Test of Zero (0) Through Nine (9) Millimeters of Induration. Annual skin testing is required. In addition, if pulmonary symptoms develop and persist for three (3) weeks or more, the tuberculin skin test shall be repeated, three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear, and a chest x-ray shall be taken.

Section 7. Tuberculin Skin Testing of Staff. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed one (1) year of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually within two (2) weeks before or after the anniversary of their last skin test.

Section 8. X-raying of Staff. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or, the individual can document the previous completion of a course of prophylactic treatment with isoniazid.

Section 9. Responsibility for Screening and Monitoring Requirements. The administrator of each long-term care facility is responsible for ensuring that all skin-tests, chest x-rays and sputum sample submissions are done in accordance with Sections 1 through 8 of this regulation. In those facilities not employing professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from either the local health department or private medical practitioners. Irrespective of who carries out the screening and monitoring requirements, all skin testing dates and results, all chest x-ray reports and all sputum sample culture and smear results shall be recorded as a permanent part of the medical record and be summarized on the individual's transfer form when an inter-facility transfer occurs.

Section 10. Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the administrator of the long-term care facility immediately upon becoming known: chest x-rays which are suspicious for tuberculosis; sputum smears positive for acid-fast bacilli; sputum cultures positive for mycobacterium tuberculosis; residents or staff who converts from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; and all residents and staff who have a skin test of ten (10) millimeters or more induration at the time of admission or employment, respectively.

Section 11. Prophylaxis of Skin Test Converters. Any resident or staff whose skin test status converts from less than ten (10) to ten (10) or more millimeters of induration should be given preventive therapy with isoniazid for a year unless medically contraindicated as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, a chest x-ray shall be taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion. If the resident or staff member completes one (1) year of preventive therapy with isoniazid, no further x-rays are required except in accordance with Section 5 of this regulation.

C. HERNANDEZ, M.D., M.P.H., Commissioner
THOMAS D. DUNCAN, Vice Chairman
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 1, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m., in the CHR, Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: Patients and residents in long term care facilities (except Family Care Homes and ICF-MR/DD facilities)

(a) Direct and indirect costs or savings to those affected: It is anticipated that costs of testing and monitoring will be offset by savings resulting from preventing new cases of TB

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: Facilities will be required to keep records of the skin test status of all patients and report any cases of TB to local health departments.

(2) Effects on the promulgating administrative body: The regulation will not result in any costs for the Certificate of Need and Licensure Board. The Cabinet for Human Resources will indirectly bear some of the costs through the Medicaid program and through increased TB control activity in local health departments.

(a) Direct and indirect costs or savings: See above

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The cabinet's paperwork requirements may increase indirectly through increased identification of cases of TB

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to maintain the status quo. Existing regulations have no requirements for TB testing of patients.

(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. These are licensure standards. All services are required to meet the same requirements.

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

904 KAR 2:116. Low income home energy assistance program.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of two (2) components of energy assistance, subsidy and hardship, under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household or authorized representative of the household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the cabinet a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) "Subsidy component" is that portion of benefits reserved as energy assistance for heating.

(6) "Hardship component" is that portion of benefits reserved for energy crisis assistance after the subsidy component is terminated. The hardship component is for eligible households who are without heat.

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and hardship components:

(a) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(b) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$415	$4,980
2	560	6,720
3	705	8,460
4 or more	850	10,200

(c) If federal law prohibits setting income eligibility limits below 100 percent of poverty, then for each household member more than four (4), the above income eligibility limitation for four (4) or more will be increased by $145 monthly or $1,740 yearly for each additional household member.

(d) The household must have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if said cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the hardship component must attest that an immediate need for energy exists because the household is without heat.

(2) Households are eligible to receive benefits under both the subsidy and hardship components.

Section 4. Benefit Levels. Payment amounts for the

subsidy and hardship components are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households will be made for the full benefit amount based on program component, type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

	Payment Amount	
Monthly Household Income	Household Size 1 and 2	Household Size 3 or more
$ 0-400	$138	$150
401-800	120	132
over 800	—	113

Scale B.
Energy Sources: Natural Gas, Coal, Wood

	Payment Amount	
Monthly Household Income	Household Size 1 and 2	Household Size 3 or more
$ 0-400	$125	$137
401-800	107	119
over 800	—	100

Hardship Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

	Payment Amount	
Monthly Household Income	Household Size 1 and 2	Household Size 3 or more
$ 0-400	$276	$300
401-800	239	263
over 800	—	226

Scale B.
Energy Sources: Natural Gas, Coal, Wood

	Payment Amount	
Monthly Household Income	Household Size 1 and 2	Household Size 3 or more
$ 0-400	$250	$274
401-800	213	237
over 800	—	200

(2) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy or hardship components may be reduced proportionately.

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) Whenever feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) Payment under the hardship component is authorized by a one (1) party check made payable to the energy provider (landlord) only, unless the provider refuses to accept the payment on behalf of the recipient and deliver or restore service, whereupon, the payment will be made to the recipient only. All payments will be mailed to the recipient.

(3) When a two (2) party check is not issued under the subsidy or hardship components, the recipient shall sign a statement as part of the application prior to receipt of funds affirming that benefits received under HEAP shall be utilized solely for home energy.

(4) Under the subsidy and hardship components, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy for heating under the appropriate component. The household will decide how to divide payment if more than one (1) provider is used.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. The cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the subsidy component shall be accepted as follows:

(a) Households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability may apply beginning October 15, 1984 and ending no later than October 26, 1984.

(b) Applications shall be accepted from all households beginning November 12, 1984 and ending no later than December 31, 1984.

(2) Applications for the hardship component shall be accepted beginning January 7, 1985 and ending no later than May 31, 1985.

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy and hardship components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or May 31, 1985, whichever comes first.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

Section 9. Allocation of Funds. (1) Up to thirteen (13) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to two (2) percent or a minimum of $500,000 shall be reserved for the Gas Furnace Retrofit Pilot Project.

(3) Up to $4,000,000 shall be reserved for the hardship component. Fifty (50) percent of the funds available under the hardship component shall be reserved for households

whose primary source of energy for heating is electricity or natural gas and fifty (50) percent shall be reserved for all other sources of energy. Any funds remaining available from the subsidy component shall be made available under the hardship component.

(4) Remaining benefit funds available under Public Law 97-35 shall be reserved for the subsidy component. Fifty (50) percent of the funds available under the subsidy component shall be reserved for households eligible to apply beginning October 15, 1984 and ending no later than October 26, 1984. The remaining fifty (50) percent plus any funds remaining available after October 26, 1984 shall be reserved for households applying beginning November 12, 1984 and ending no later than December 31, 1984. Any funds remaining available under the subsidy component after December 31, 1984 shall be made available under the hardship component.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

Section 11. 904 KAR 2:115 and 904 KAR 2:115E, Eligibility, criteria for home energy assistance program, are hereby repealed.

JACK F. WADDELL, Commission
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: October 10, 1984

FILED WITH LRC: October 12, 1984 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984 at 9 a.m. in the Vital Statistics Conference Room, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984 of their desire to appear and testify at the hearing: R. 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 146,000 low income households.

(a) Direct and indirect costs or savings to those affected: Approximately $20 million benefit funds will be provided to eligible households.

1. First year: Approximately 130,000 households will receive an average benefit of $125 and approximately 16,000 households will receive an average benefit of $250.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: All households must apply for benefits under this program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 10% of LIHEAP block grant funds will be reserved for administrative costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulation.

(3) Assessment of anticipated effect on state and local revenues: All benefits apply to energy costs of low income households.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable; program implementation governed by federal law and 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: The Low Income Home Energy Assistance Program (LIHEAP) is 100% federally funded and this regulation is promulgated in accordance with the LIHEAP block grant application and plan narrative.

Tiering:
Was tiering applied? No. Not applicable to Low Income Home Energy Assistance Program regulations.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services

905 KAR 7:100. Resident liaison responsibilities.

RELATES TO: KRS 208.410, Chapter 202A
PURSUANT TO: KRS 194.050, 202A.191
NECESSITY AND FUNCTION: KRS 194.050 requires the Cabinet for Human Resources to adopt regulations necessary to operate the programs vested in the cabinet. KRS 202A.191 requires the secretary to adopt rules and regulations for the proper administration and enforcement of this chapter. KRS 208.410 requires the cabinet to arrange for a program of care, treatment and rehabilitation of the children committed to it. The purpose of this regulation is to establish a resident liaison program in each of the residential facilities operated by the Department for Social Services.

Section 1. Program and Purpose. (1) The Department for Social Services shall develop and implement a liaison program for the Division of Children's Residential Services.

(2) The purpose of this program shall be:

(a) To provide youth in residential services' programs with a contact person outside the facility staff with whom they may discuss their problems and concerns.

(b) To advise clients of their rights, duties, and responsibilities, including their right to file a formal service/civil rights complaint and/or to sign out of a psychiatric facility.

(c) To conduct evidentiary hearings as requested in compliance with the service/civil rights complaint procedures and/or to call for an independent Medical Review per KRS Chapter 202A.
(d) To work with facility staff in an effort to resolve problems and concerns of both staff and residents prior to a formal complaint.
(e) To identify both long and short-term goals that affect the client population.
(f) To advise central office of problems and concerns that have been identified.
(g) To assist residents in filing a formal service/civil rights complaint and/or offer assistance to residents of a psychiatric facility of his right to refuse treatment.

Section 2. Recording. The liaison shall note in the client record all problems and concerns discussed and the resolution thereof.

Section 3. Access. The liaison shall not be denied access to clients or the record of clients with whom they are working.

Section 4. Confidentiality. The liaison shall protect the confidentiality of the records and identity of the clients in accordance with the policies of the department and the Kentucky Revised Statutes.

Section 5. Reporting. The liaison shall keep the program director and central office informed of his activities.

Section 6. Procedures. (1) The name, address, and telephone number of the liaison and a brief statement about the child's right to contact the liaison shall be included in the orientation package given the residents upon admission.
(2) A certain day of each month (i.e., the third Friday) shall be scheduled for the liaison to be at the facility—giving the place and hour that clients may talk with him.
(3) The liaison shall be provided with a list of new admissions since his last monthly visit so he may introduce himself to the resident and let him know he is interested in him and available. (This should be a casual meeting on campus—not a scheduled appointment in some room.)
(4) The liaison shall document a summary progress note of his contacts in the child's record.
(5) Formal complaints shall be forwarded to a Juvenile Services Specialist (JSS) who has not been involved with the client. The JSS shall follow manual procedures on complaints.
(6) The liaison shall periodically talk informally with staff on an individual basis to get their feelings about the program and suggestions for improvement.
(7) The liaison shall submit a monthly report to central office to include the number of residents talked with, major problems, staff concerns, recommendations for improvement, needs of the facility, etc.
(8) The liaison shall keep the Program Director informed of his activities.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 12, 1984
FILED WITH LRC: October 12, 1984 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1984, at 9 a.m. in the CHR Vital Statistics Conference Room, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1984, of their desire to appear and testify at the hearing. Hughes Walker, Office of the 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:
(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:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: Same as above
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Procedure already in place
(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: 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 facilities will use the same procedures.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October 8-9, 1984 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 8, 1984 at 2 p.m. and on Tuesday, October 9, 1984 at 10 a.m. in Room 103. Representative Bill Brinkley, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Bruce, seconded by Senator Quinlan, the minutes of the September 10-11, 1984 meeting were approved. Present were:

Members: Representative Bill Brinkley, Chairman; Senators Pat McCuiston, Bill Quinlan, and Joe Lane Travis; and Representatives James Bruce, Albert Robinson, and Greg Stumbo.

Guests: Nancy Brinly, Board of Physical Therapy; Tom Carter, Board of Medical Licensure; Bob Arnold, David Boswell, Tom Troth, Department of Agriculture; Gary Bale, Charles Calloway, Robert Elder, Conley Manning, Donna McAnelly, Bernard Minnis, Sidney Simandle, Kathy Williams, Department of Education; Ralph Dennis, Carl D. Dixon, Ron Sanders, John M. Stapleton, Energy Cabinet; Don McCormick, Department of Fish & Wildlife Resources; Carl B. Larsen, Harness Racing Commission; Marge Brock, Barbara Coleman, Dudley J. Conner, John Cubine, Don Dixon, John P. Draper, Alice Filiatreau, Jim Heth, Margaret Hockensmith, Greg Lawther, Karen O'Connell, Sharon Perry, Ishmael Preston, Tommy Thompson, Rob Williams, Larry Wilson, Mark Yancey, Cabinet for Human Resources; Ed Fossett, Gil McCarty, Patrick D. McWhorter, Patrick Watts, Department of Insurance; Wayne Whitney, Londa L. Wolanin, Higher Education Assistance Authority; J. Alex Barber, James L. Dickinson, Larry Grasch, James B. Hale, Laurie Keller, George Risk, Natural Resources and Environmental Protection Cabinet; Barbara Kibler, Protection and Advocacy; Elwood Harris, Revenue Cabinet; Thomas W. Brawner, Charles Briggs, G. E. Ethington, Jr., Patricia Foley, Nancy H. Miracle, John Penrod, Debbie Prewitt, Sandra Pullen, Bill Wilhoite, Transportation Cabinet; Charles Whelan, Bizwil, Inc.; Angela J. Cheak, Kathleen B. Gannoe, Blue Grass Long Term Care Ombudsman Program, Inc.; William W. Studghill, Crown American Life Insurance Co.; Marie J. Alagia, DOT-MVC/KAHCF; Etta Ruth Kepp, Governor's Office for Policy and Management; Ben Fowler, Patrick Murphy, Mark R. Overstreet, The Hertz Corporation; Michele Resch, IBM-Lex. Employees-FCU; Denis Fleming, Jr., Kentucky Association Health Care Facilities; Joseph L. Gale, Ted L. LaPin, Irving M. Lipetz, Kentucky Association for Older Persons; Bill Caylor, Kentucky Coal Association; C. D. Countin, Kentucky Credit Union League; Nancy Lipinski, Candace Shaughnessy, Kentucky Hospital Association; Ken Hart, Kentucky Independent Coal Operators Association; Bill Doll, Kentucky Medical Association; John Daunhauer, David Garnett, Bo Queen, John L. Tinsley, Tom Zimmer, Motor Vehicle Commission; Dub Wilkins, PAMCO; Tom Fitzgerald.

LRC Staff: Susan Harding, Shirley Hart, Joe Hood, Gregory Karambellas, Chris Lilly, Paula Payne and Carla Arnold.

Press: Livingston Taylor, Courier-Journal; Eileen Melvin, WKED.

The Subcommittee determined that the following regulations did not meet the requirements of KRS Chapter 13A.

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. Repeals 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.)

The subcommittee determined that the agency exceeded statutory authority. The subcommittee unanimously approved the following attachment to this regulation:

"In Section 4, the language "or if, in the board's opinion, the approval of the particular school, college, or university would not be in the best interest of the Commonwealth" should be deleted. The standards upon which the board must base its decision are set forth in the statutes. There is no statutory authority for board action based on 'the best interest of the Commonwealth'."

Department for Surface Mining Reclamation & Enforcement

405 KAR 7:030. (Surface mining and reclamation: Applicability.)

405 KAR 16:020. (Surface mining and reclamation: Contemporaneous reclamation.)

The subcommittee determined that these regulations exceeded statutory authority, and directed the staff to notify standing committee staff of its objections for possible amendment during the 1986 session of the General Assembly. The subcommittee approved the following attachment to these regulations:

"Kentucky law requires that Kentucky regulations be no more stringent than federal law. The Subcommittee determined that the Natural Resources and Environmental Protection Cabinet regulations are more stringent than federal law requires, and therefore exceed statutory authority and legislative intent."

Transportation Cabinet: Motor Vehicle Commission

605 KAR 1:150. (Temporary sales location: off-site sales)

While the subcommittee voted to approve this regulation, Chairman Brinkley and Senator Travis made the following objections:

The commission did not have the authority under KRS Chapter 190 to restrict off-site sales to dealers licensed in the municipality or county in which the sales were to be conducted; to require two or more resident licensed dealers to participate in such sales; to permit a licensed dealer in the municipality or county in which the off-site sale was to be conducted to prohibit the sale because "an unnecessary competitive environment" would result. The commission had exceeded its authority and had, in effect, amended KRS Chapter 190.

Department of Agriculture

Grain Insurance and Grain Dealers

302 KAR 34:010. (Kentucky Grain Insurance Fund: Definitions)

The Subcommittee had no objection to this regulation. However, the Subcommittee and agency agreed that the statutes relating to the fund need to be amended at the next session of the General Assembly in order to clarify ambiguous language. The Subcommittee instructed staff to refer this matter to the approriate standing committee.

The Subcommittee determined that the following regulations, as amended, complied with the requirements of KRS Chapter 13A:

State Board of Medical Licensure

201 KAR 9:041. (Fee schedule.) The Board of Medical Licensure requested that the fee for reregistration of inactive license be amended to $90 instead of $25 as this was to be the original fee. The Subcommittee agreed.

201 KAR 9:051. (License renewal and registration; reregistration of inactive license.) The regulation was amended by correcting a statute citation: deleting KRS 3221.571(3) and inserting in lieu thereof KRS 311.571(3).

Department of Environmental Protection
Division of Waste Management

401 KAR 31:040. (Lists of hazardous waste.) The regulation was amended to delete code I (ignitable) from the hazardous waste (F001).

Transportation Cabinet
Department of Vehicle Regulation

601 KAR 13:050. (Alcohol education or treatment program.) The Subcommittee determined that the regulation should not include the word "potential" in its statement regarding working with DUI offenders, since there was no jurisdiction over "potential" offenders. The administrative body agreed to the deletion of the word "potential."

Education and Humanities Cabinet
Office of Instruction

704 KAR 3:304. (Instructional services: Required program of studies.) The regulation was amended to include the most recent date of the material incorporated by reference.

Office of Vocational Rehabilitation

706 KAR 1:010. (Three-year plan for vocational rehabilitation services.) The regulation was amended to include the most recent date of the material incorporated by reference.

Cabinet for Human Resources
Department for Health Services

902 KAR 45:005. (Food service code.) The regulation was amended by including a statute in the pursuant to line.

902 KAR 45:150. (School sanitation.) The Cabinet for Human Resources and the Department of Education agreed with the Subcommittee that portions of this regulation were governed by the State Plumbing Code.

Department for Employment Services

904 KAR 5:160. (Unemployment insurance fund payments.) The regulation was amended to include a benefit payment register in the method for certifying checks to be written and paid for benefits under the unemployment insurance fund.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A.

Kentucky Higher Education Assistance Authority

11 KAR 4:040. Educational institution participation requirements.

11 KAR 6:010. Commonwealth work study program.

Energy Cabinet
Department of Energy Production and Utilization—Alternate Energy Development

115 KAR 2:020. Income tax credit for active solar, passive solar, wind, and geothermal energy systems.

State Board of Medical Licensure

201 KAR 9:023. Endorsement.

201 KAR 9:024. Application and reregistration forms; personal interviews; hearings.

201 KAR 9:025. Interpretation and application of KRS 311.571(8).

201 KAR 9:031. Examinations.

201 KAR 9:061. Limited licenses.

201 KAR 9:071. Temporary and emergency permits.

201 KAR 9:081. Disciplinary proceedings.

201 KAR 9:082. Informal proceedings.

Board of Physical Therapy

201 KAR 22:031. Therapist's licensing procedure.

201 KAR 22:040. Procedure for renewing licenses.

201 KAR 22:052. Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificant.

201 KAR 22:070. Requirements for foreign-trained physical therapists.

201 KAR 22:106. Assistant's certification procedure.

201 KAR 22:110. Renewal of assistant's certification.

Tourism Cabinet
Department of Fish and Wildlife Resources - Game

301 KAR 2:044. Taking of migratory wildlife.

Department of Agriculture
Grain Insurance and Grain Dealers

302 KAR 34:010. Definitions.

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection - Division of Waste Management:

401 KAR 30:010. General administrative procedures: Definitions.

401 KAR 31:160. Identification and Listing of Hazardous Waste: Appendix on basis for listing hazardous waste.

401 KAR 31:170. Identification and Listing of Hazardous Waste: Appendix on hazardous waste constituents.

401 KAR 32:020. Standards Applicable to Generators of Hazardous Waste: Manifest system.

401 KAR 32:050. Standards Applicable to Generators of Hazardous Waste: Special conditions.

401 KAR 32:100. Standards Applicable to Generators of Hazardous Waste: Appendix on hazardous waste manifest and instructions.

Department for Surface Mining Reclamation and Enforcement

405 KAR 7:020. General provisions: Definitions and abbreviations.

405 KAR 10:035. Bond and Insurance Requirements: Procedures, criteria andd hearing requirements for cancellation of surety bonds after notice of noncompliance issued for failure to maintain contemporaneous reclamation.

Transportation Cabinet
Administration
600 KAR 1:030. Public comment hearings.
600 KAR 1:070. Motor pool procedure.
Department of Vehicle Regulation
601 KAR 9:074. Motor Vehicle Tax: Kentucky highway use license, records and taxes.
601 KAR 35:020. Coal Transportation: Transportation plan, coal cooperative agreements.
601 KAR 35:040. Coal Transportation: General ton tax provisions.
601 KAR 35:050. Coal Transportation: Registration for extended weights.
Department of Highways
603 KAR 3:051. Maintenance: Recyclers.
603 KAR 4:035. Right-of-Way: Advertising devices, placement along limited access highways of four (4) or more lanes.

Education and Humanities Cabinet
Department of Education
702 KAR 3:190. School district finance: Maximum class sizes.
Bureau of Pupil Personnel Services
703 KAR 2:010. School terms: Terms and months.
Office of Instruction
704 KAR 3:320. Instructional services: Essential skills for mathematics and reading.
704 KAR 3:325. Instructional services: Effective instructional leadership act.
704 KAR 10:022. Elementary and Secondary Education Act: Elementary, middle and secondary schools standards.
704 KAR 20:005. Teacher certification: Kentucky standards for preparation program approval.
704 KAR 20:090. Teacher certification: Provisional elementary certificate.
Office of Vocational Education
705 KAR 7:070. Adult Education: Minimum standards of admission for long-term adult standards in vocational programs.

Public Protection and Regulation Cabinet
Department of Insurance
806 KAR 15:010. Life insurance and annuity contracts: Variable annuity contracts.
806 KAR 15:030. Life insurance and annuity contracts: Variable life insurance.
Harness Racing Commission
811 KAR 1:090. Harness Racing Rules: Stimulants and drugs.
811 KAR 1:105. Harness Racing Rules: Review and appeal.
811 KAR 1:150. Harness Racing Rules: Officials; deputies and assistants.

Cabinet for Human Resources
Department for Health Services
902 KAR 1:340. State health plan.
902 KAR 13:100. Emergency Medical Technicians: Emergency extension of certifications.
902 KAR 20:006. Certificate of Need and Licensure: Certificate of need process.
902 KAR 20:016. Certificate of Need and Licensure: Hospitals, operation and services.
902 KAR 20:066. Certificate of Need and Licensure: Operation and services; programs, day health care.
902 KAR 20:132. Certificate of Need and Licensure: Certificate of need expenditure minimums.
902 KAR 20:160. Certificate of Need and Licensure: Chemical dependency treatment services and facility specifications.
Department for Employment Services
Unemployment Insurance
904 KAR 5:041. Repeal of 904 KAR 5:040.
904 KAR 5:070. Separation for cause; reports.
904 KAR 5:080. Reasonable time for protesting claim.
904 KAR 5:090. Labor dispute or strike; notification.
904 KAR 5:200. Financing benefits for state employees.
904 KAR 5:211. Repeal of 904 KAR 5:210.
904 KAR 5:260. Unemployment insurance procedures.
Research and Planning
904 KAR 6:010. Work incentive program.
904 KAR 6:020. Weatherization assistance for low income persons.
904 KAR 6:040. Job Training Partnership Act.
904 KAR 6:050. Veterans' benefits.
Department for Social Services
Child Welfare
905 KAR 1:180. DSS policy and procedures manual.
Children's Residential Services
905 KAR 7:080. Children's treatment services facility manual.
Aging Services
905 KAR 8:070. Ombudsman policy and procedural manual.

The following regulations were deferred at the agency's request.

Department of Agriculture
Livestock Sanitation
302 KAR 20:160. Control of viral equine arteritis.
302 KAR 20:170. Movement of equine.

Transportation Cabinet
Administration
600 KAR 1:060. Safety hard hat procedure.

Education and Humanities Cabinet
Office of Vocational Education: Fiscal Management
705 KAR 2:030. Foundation program units.

The Subcommittee had no objections to the following emergency regulation.

Cabinet for Human Resources
Department for Social Insurance: Public Assistance
904 KAR 2:115E. Eligibility, criteria for home energy assistance program.

The subcommittee had no objections to emergency regulations which had been filed.

The subcommittee adjourned at 12 noon until November 12, 1984.

Administrative Register of Kentucky

Cumulative Supplement

Locator Index—Effective Dates.....E2

KRS Index.....E7

Subject Index to Volume 11 .....E11

Locator Index—Effective Dates

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

Volume 10

Regulation	10 Ky.R. Page No.	Effective Date
400 KAR 2:020	1206	8-7-84
405 KAR 1:015	1215	8-7-84
405 KAR 3:015	1216	8-7-84
405 KAR 7:015	1216	8-7-84
405 KAR 30:015	1218	8-7-84
705 KAR 2:030		
Amended	1181	
900 KAR 3:010	1226	8-7-84

Volume 11

Emergency Regulation	11 Ky.R. Page No.	Effective Date
105 KAR 1:080E	535	8-31-84
109 KAR 9:010E	1	6-15-84
Replaced	93	8-7-84
201 KAR 9:021E	123	7-12-84
Replaced	553	10-9-84
301 KAR 1:140E	692	10-2-84
301 KAR 2:044E	387	8-1-84
Replaced	422	10-9-84
301 KAR 2:200E	693	10-2-84
302 KAR 16:010E	125	7-12-84
Replaced	399	9-11-84
302 KAR 16:020E	126	7-12-84
Replaced	400	9-11-84
302 KAR 16:030E	126	7-12-84
Replaced	401	9-11-84
302 KAR 16:040E	126	7-12-84
Replaced	324	9-11-84
302 KAR 16:050E	127	7-12-84
Replaced	324	9-11-84
302 KAR 20:150E	2	6-5-84
Replaced	401	9-11-84
302 KAR 20:160E	3	6-5-84
Expired		9-29-84
302 KAR 20:170E	127	7-12-84
Expired		10-30-84
302 KAR 34:010E	128	7-12-84
Replaced	402	10-9-84
401 KAR 4:200E	3	5-16-84
Replaced	176	8-7-84
401 KAR 5:200E	4	5-16-84
Replaced	177	8-7-84
401 KAR 6:200E	5	5-16-84
Replaced	178	8-7-84
401 KAR 30:070E	6	5-16-84
Replaced	179	8-7-84
401 KAR 50:016E	7	5-16-84
Replaced	179	8-7-84
402 KAR 3:010E	536	9-13-84
405 KAR 1:015E	7	5-16-84
Replaced		8-7-84
405 KAR 3:015E	8	5-16-84
Replaced		8-7-84
405 KAR 7:015E	8	5-16-84
Replaced		8-7-84
405 KAR 10:035E	388	7-16-84
Replaced	577	10-9-84
405 KAR 16:020E	390	7-16-84
Replaced	578	10-9-84
405 KAR 30:015E	10	5-16-84
Replaced		8-7-84
501 KAR 6:010E	10	5-16-84
Replaced		6-28-84
600 KAR 1:030E	536	8-28-84
Replaced	517	10-9-84
601 KAR 1:015E	128	7-13-84
Replaced	332	9-11-84
601 KAR 1:130E	129	7-13-84
Expired		10-30-84
601 KAR 9:011E	130	7-13-84
Replaced	335	9-11-84
601 KAR 9:013E	130	7-13-84
Replaced	240	9-11-84
601 KAR 9:074E	131	7-13-84
Replaced	581	10-9-84
601 KAR 13:040E	134	7-13-84
Replaced	335	9-11-84
601 KAR 13:050E	135	7-13-84
Replaced	699	10-9-84
601 KAR 35:010E	136	7-13-84
Expired		10-30-84
601 KAR 35:020E	137	7-13-84
Replaced	585	10-9-84
601 KAR 35:040E	139	7-13-84
Replaced	587	10-9-84
601 KAR 35:050E	139	7-13-84
Replaced	587	10-9-84
602 KAR 15:020E	140	7-13-84
Replaced	549	9-11-84
603 KAR 5:130E	141	7-13-84
Expired		10-30-84
603 KAR 7:020E	142	7-13-84
Replaced	346	9-11-84
603 KAR 7:030E	142	7-13-84
Replaced	347	9-11-84
603 KAR 7:040E	143	7-13-84
Replaced	348	9-11-84
603 KAR 7:050E	143	7-13-84
Replaced	349	9-11-84
603 KAR 7:060E	144	7-13-84
Replaced	349	9-11-84
603 KAR 7:070E	144	7-13-84
Replaced	350	9-11-84
702 KAR 1:120E	697	9-21-84
804 KAR 9:050E	144	7-11-84
Replaced	361	9-11-84
815 KAR 7:080E	145	7-13-84
Replaced	372	9-11-84
900 KAR 1:011E	15	5-21-84
Replaced	102	8-7-84
900 KAR 1:030E	16	5-16-84
Replaced	103	8-7-84
900 KAR 1:040E	17	5-16-84
Replaced	103	8-7-84
900 KAR 3:010E	17	5-16-84
Replaced		8-7-84
902 KAR 1:340E	18	5-16-84
Expired		9-29-84
902 KAR 4:050E	18	5-21-84
Replaced		6-28-84
902 KAR 4:060E	19	5-21-84
Replaced	104	8-7-84
902 KAR 4:070E	19	5-21-84
Replaced	104	8-7-84
902 KAR 4:080E	20	5-21-84
Replaced	105	8-7-84
902 KAR 4:090E	147	6-20-84
Replaced	105	8-7-84
902 KAR 6:060E	537	8-27-84
Replaced	374	9-11-84
902 KAR 8:020E	20	5-21-84
Replaced		7-10-84
Resubmitted	538	9-13-84
902 KAR 8:030E	21	5-21-84
Replaced	106	8-7-84
902 KAR 10:110E	149	6-20-84
Replaced	107	9-11-84
902 KAR 12:060E	22	5-21-84
Replaced	108	8-7-84
902 KAR 12:070E	23	5-21-84
Replaced	108	8-7-84
902 KAR 12:080E	24	5-21-84
Replaced		6-28-84
902 KAR 13:100E	393	8-2-84
Replaced	526	10-9-84
902 KAR 20:006E	539	8-27-84
Replaced	460	10-9-84
902 KAR 45:130E	25	5-21-84
Replaced	112	8-7-84
902 KAR 45:140E	25	5-21-84
Replaced	112	8-7-84
902 KAR 50:090E	26	5-21-84
Replaced	112	8-7-84
902 KAR 50:100E	27	5-21-84
Replaced	114	8-7-84
904 KAR 1:004E	149	7-6-84
Replaced	280	9-11-84
904 KAR 1:020E	697	9-19-84
904 KAR 1:036E	153	7-6-84
Replaced	284	9-11-84
904 KAR 1:045E	544	8-27-84
Replaced	290	9-11-84
904 KAR 1:055E	158	7-6-84
Replaced	291	9-11-84
904 KAR 1:250E	28	5-16-84
Replaced		6-28-84
904 KAR 2:016E	159	6-20-84
Replaced	82	8-7-84
904 KAR 2:115E	393	7-20-84
Expires		11-30-84
904 KAR 2:140E	29	5-16-84
Replaced		6-28-84
Resubmitted	163	7-11-84
Replaced	298	9-11-84
904 KAR 2:150E	29	5-16-84
Replaced		6-28-84
904 KAR 2:160E	30	5-16-84
Replaced		6-28-84
904 KAR 2:170E	30	5-16-84
Replaced		6-28-84
904 KAR 2:180E	31	5-16-84
Replaced		6-28-84
904 KAR 2:190E	31	5-16-84
Replaced		6-28-84

Emergency Regulation	11 Ky.R. Page No.	Effective Date
904 KAR 2:200E	32	5-16-84
Replaced		6-28-84
904 KAR 3:035E	163	6-20-84
Replaced	89	8-7-84
904 KAR 3:090E	32	5-16-84
Replaced		6-28-84
Resubmitted	165	7-11-84
Replaced	302	9-11-84
904 KAR 5:100E	33	5-21-84
Replaced	196	7-10-84
904 KAR 5:130E	34	5-21-84
Replaced	197	7-10-84
904 KAR 5:260E	36	5-21-84
Replaced	304	7-10-84
904 KAR 5:270E	165	7-6-84
Replaced	375	9-11-84
904 KAR 6:010E	36	5-21-84
Replaced		6-28-84
904 KAR 6:020E	37	5-21-84
Replaced		6-28-84
904 KAR 6:030E	37	5-21-84
Replaced		6-28-84
904 KAR 6:040E	38	5-21-84
Replaced		6-28-84
904 KAR 6:050E	38	5-21-84
Replaced		6-28-84
905 KAR 1:150E	39	5-17-84
Replaced		7-10-84
905 KAR 1:170E	166	6-20-84
Replaced	115	8-7-84
905 KAR 1:180E	39	5-17-84
Replaced	116	8-7-84
Resubmitted	544	8-27-84
Replaced	504	10-9-84
905 KAR 5:030E	166	6-20-84
Replaced	116	8-7-84
905 KAR 6:020E	40	5-17-84
Replaced		6-28-84
905 KAR 6:030E	40	5-17-84
Replaced	117	8-7-84
905 KAR 7:010E	41	5-21-84
Replaced		6-28-84
905 KAR 7:020E	41	5-17-84
Replaced	117	8-7-84
905 KAR 7:030E	42	5-17-84
Replaced		6-28-84
905 KAR 7:040E	42	5-21-84
Replaced		6-28-84
905 KAR 7:050E	167	6-20-84
Replaced	117	8-7-84
905 KAR 7:060E	44	5-21-84
Replaced		6-28-84
905 KAR 7:070E	44	5-21-84
Replaced		6-28-84
905 KAR 7:080E	45	5-17-84
Replaced	118	8-7-84
Resubmitted	545	8-27-84
Replaced	505	10-9-84
905 KAR 7:090E	167	6-20-84
Replaced	118	8-7-84
905 KAR 8:010E	46	5-16-84
Replaced		6-28-84
905 KAR 8:020E	546	8-27-84
Replaced	376	9-11-84
905 KAR 8:030E	46	5-16-84
Replaced		6-28-84
905 KAR 8:040E	47	5-16-84
Replaced		6-28-84
905 KAR 8:050E	47	5-16-84
Replaced		6-28-84
905 KAR 8:060E	48	5-16-84
Replaced	119	9-11-84
905 KAR 8:070E	548	8-27-84
Replaced	530	10-9-84
905 KAR 8:080E	48	5-16-84
Replaced		6-28-84
905 KAR 8:110E	49	5-16-84
Replaced		6-28-84
905 KAR 8:120E	49	5-16-84
Replaced	414	9-11-84

Regulation	11 Ky.R. Page No.	Effective Date
905 KAR 8:130E	50	5-16-84
Replaced		6-28-84
906 KAR 1:010E	50	5-16-84
Replaced	119	8-7-84
906 KAR 1:020E	51	5-16-84
Replaced	120	8-7-84

Regulation	11 Ky.R. Page No.	Effective Date
1 KAR 1:010		
Amended	169	
1 KAR 3:005		
Amended	609	
11 KAR 4:040	507	10-9-84
11 KAR 6:010	508	10-9-84
12 KAR 4:080	509	
12 KAR 4:090	510	
12 KAR 4:100	510	
12 KAR 4:110	511	
12 KAR 4:120	512	
12 KAR 4:130	512	
12 KAR 4:140	514	
12 KAR 4:150	515	
12 KAR 4:160	516	
12 KAR 4:170	516	
12 KAR 5:020		
Amended	612	
12 KAR 5:030		
Amended	613	
12 KAR 5:040		
Amended	615	
40 KAR 2:010		
Amended	52	7-1-84
105 KAR 1:010		
Amended	53	8-7-84
105 KAR 1:080		
Amended	616	
106 KAR 1:020		
Amended	617	
106 KAR 1:040	879	
107 KAR 1:040	665	
109 KAR 9:010	93	8-7-84
115 KAR 2:020	306	
Amended	550	10-9-84
200 KAR 5:308		
Amended	201	9-11-84
200 KAR 9:010		
Repealed	1	6-15-84
201 KAR 9:020		
Repealed	123	7-12-84
201 KAR 9:021	309	
Amended	553	10-9-84
201 KAR 9:023	311	10-9-84
201 KAR 9:024	311	10-9-84
201 KAR 9:025	312	10-9-84
201 KAR 9:030		
Repealed	553	10-9-84
201 KAR 9:031	313	10-9-84
201 KAR 9:040		
Repealed	553	10-9-84
201 KAR 9:041	314	
Amended	554	10-9-84
201 KAR 9:050		
Repealed	553	10-9-84
201 KAR 9:051	314	
Amended	555	10-9-84
201 KAR 9:060		
Repealed	123	7-12-84
201 KAR 9:061	315	
Amended	556	10-9-84
201 KAR 9:070		
Repealed	553	10-9-84
201 KAR 9:071	316	10-9-84
201 KAR 9:080		
Repealed	123	7-12-84
201 KAR 9:081	317	
Amended	557	10-9-84
201 KAR 9:082	320	10-9-84
201 KAR 9:085		
Repealed	123	7-12-84

Regulation	11 Ky.R. Page No.	Effective Date
201 KAR 13:040		
Amended	55	8-7-84
Amended	732	
201 KAR 13:050		
Amended	56	8-7-84
Amended	733	
201 KAR 22:010		
Amended	734	
201 KAR 22:020		
Amended	735	
201 KAR 22:031		
Amended	415	10-9-84
201 KAR 22:040		
Amended	417	10-9-84
201 KAR 22:052		
Amended	417	10-9-84
201 KAR 22:070		
Amended	419	10-9-84
201 KAR 22:106		
Amended	420	10-9-84
201 KAR 22:110		
Amended	422	10-9-84
201 KAR 23:030		
Amended	201	9-11-84
301 KAR 1:075		
Amended	619	
301 KAR 1:140		
Amended	620	
301 KAR 2:044		
Amended	422	10-9-84
301 KAR 2:050		
Amended	735	
301 KAR 2:071		
Repealed	321	9-11-84
301 KAR 2:180	666	
301 KAR 2:190	321	9-11-84
301 KAR 2:200	880	
302 KAR 16:010	94	
Amended	399	9-11-84
302 KAR 16:020	94	
Amended	400	9-11-84
302 KAR 16:030	95	
Amended	401	9-11-84
302 KAR 16:040	324	9-11-84
302 KAR 16:050	324	9-11-84
302 KAR 20:150	95	
Amended	401	9-11-84
302 KAR 20:160	95	
Amended	402	
302 KAR 20:170	325	
302 KAR 34:010	96	
Amended	402	10-9-84
400 KAR 2:010		
Amended	171	8-7-84
400 KAR 2:030		
Amended	172	8-7-84
400 KAR 2:040		
Amended	173	8-7-84
400 KAR 2:050		
Amended	176	8-7-84
401 KAR 4:200		
Amended	176	8-7-84
401 KAR 5:026		
Amended	424	
Amended	703	
401 KAR 5:050		
Amended	737	
401 KAR 5:055		
Amended	740	
401 KAR 5:060		
Amended	756	
401 KAR 5:065		
Amended	765	
401 KAR 5:070		
Amended	773	
401 KAR 5:200		
Amended	177	8-7-84
401 KAR 6:200		
Amended	178	8-7-84
401 KAR 30:010		
Amended	202	10-9-84

Regulation	11 Ky.R. Page No.	Effective Date
401 KAR 30:070		
Amended	179	8-7-84
401 KAR 31:040		
Amended	210	
Amended	560	10-9-84
401 KAR 31:160		
Amended	220	10-9-84
401 KAR 31:170		
Amended	222	10-9-84
401 KAR 32:020		
Amended	226	10-9-84
401 KAR 32:050		
Amended	227	10-9-84
401 KAR 32:100	326	
Amended	568	10-9-84
401 KAR 49:010		
Amended	56	9-11-84
401 KAR 49:020		
Amended	58	9-11-84
401 KAR 49:030		
Amended	61	
Amended	403	9-11-84
401 KAR 49:040	96	9-11-84
401 KAR 50:015		
Amended	776	
401 KAR 50:016		
Amended	179	8-7-84
401 KAR 57:011	885	
401 KAR 57:035	887	
401 KAR 57:040	888	
401 KAR 59:036	889	
401 KAR 59:049	890	
401 KAR 59:099	891	
401 KAR 59:131	893	
401 KAR 59:136	894	
401 KAR 59:141	895	
401 KAR 59:146	896	
401 KAR 59:171	897	
401 KAR 59:196	899	
401 KAR 59:201	900	
401 KAR 59:212		
Amended	779	
401 KAR 59:213	901	
401 KAR 59:216	902	
401 KAR 59:221	903	
401 KAR 59:275	905	
401 KAR 59:280	906	
401 KAR 59:300	907	
401 KAR 59:305	908	
401 KAR 61:165		
Amended	574	10-1-84
401 KAR 100:020	667	
402 KAR 3:010	669	
405 KAR 7:020		
Amended	228	10-9-84
405 KAR 7:030		
Amended	235	
Amended	576	10-9-84
405 KAR 10:035	331	
Amended	577	10-9-84
405 KAR 16:020		
Amended	237	
Amended	578	10-9-84
501 KAR 6:010		
Amended	782	
600 KAR 1:030	517	10-9-84
600 KAR 1:040	518	
Amended	726	
600 KAR 1:050	520	
Amended	728	
600 KAR 1:060	523	
600 KAR 1:070	523	10-9-84
600 KAR 2:040	909	
601 KAR 1:015	332	9-11-84
601 KAR 1:130	334	
Withdrawn		9-5-84
601 KAR 9:011	335	9-11-84
601 KAR 9:013		
Amended	240	9-11-84
601 KAR 9:074		
Amended	241	
Amended	581	10-9-84

Regulation	11 Ky.R. Page No.	Effective Date
601 KAR 13:040	335	9-11-84
601 KAR 13:050	337	
Amended	584	
Amended	699	10-9-84
601 KAR 35:010	338	
Withdrawn		9-5-84
601 KAR 35:020	339	
Amended	585	10-9-84
601 KAR 35:040	341	
Amended	587	10-9-84
601 KAR 35:050	343	
Amended	587	10-9-84
602 KAR 15:010		
Amended	244	9-11-84
602 KAR 15:020	344	
Amended	549	9-11-84
603 KAR 3:051		
Amended	450	10-9-84
603 KAR 4:035		
Amended	246	
Amended	588	10-9-84
603 KAR 5:130	345	
Withdrawn		8-27-84
603 KAR 5:140	670	
603 KAR 7:020	346	9-11-84
603 KAR 7:030	347	9-11-84
603 KAR 7:040	348	9-11-84
603 KAR 7:050	349	9-11-84
603 KAR 7:060	349	9-11-84
603 KAR 7:070	350	9-11-84
605 KAR 1:150	524	10-9-84
702 KAR 1:005		
Amended	180	8-7-84
702 KAR 1:115	351	9-11-84
702 KAR 1:120	671	
702 KAR 3:100		
Amended	249	9-11-84
702 KAR 3:190	352	
Amended	591	10-9-84
702 KAR 4:030		
Amended	249	
Withdrawn		10-5-84
703 KAR 1:090	671	
703 KAR 2:010		
Amended	250	10-9-84
Recodified		10-9-84
703 KAR 2:050		
Amended	185	8-7-84
Recodified		10-5-84
704 KAR 3:005		
Amended	622	
704 KAR 3:035		
Amended	251	9-11-84
704 KAR 3:304		
Amended	252	
Amended	591	10-9-84
704 KAR 3:320	353	10-9-84
704 KAR 3:325	355	
Amended	591	10-9-84
704 KAR 10:022		
Amended	253	10-9-84
704 KAR 20:005		
Amended	254	10-9-84
704 KAR 20:035		
Amended	624	
704 KAR 20:045		
Amended	625	
704 KAR 20:050		
Amended	627	
704 KAR 20:060		
Amended	628	
704 KAR 20:065		
Amended	629	
704 KAR 20:070		
Amended	255	9-11-84
Amended	630	
704 KAR 20:076		
Amended	255	9-11-84
704 KAR 20:078		
Amended	256	9-11-84
704 KAR 20:080		
Amended	257	9-11-84
Amended	631	

Regulation	11 Ky.R. Page No.	Effective Date
704 KAR 20:085		
Amended	632	
704 KAR 20:090		
Amended	258	10-9-84
Amended	633	
704 KAR 20:120		
Amended	634	
704 KAR 20:145		
Amended	635	
704 KAR 20:150		
Amended	636	
704 KAR 20:159		
Amended	637	
704 KAR 20:210		
Amended	637	
704 KAR 20:222		
Amended	638	
704 KAR 20:230		
Amended	640	
704 KAR 20:235		
Amended	641	
704 KAR 20:240		
Amended	643	
704 KAR 20:245		
Amended	644	
704 KAR 20:270		
Amended	645	
704 KAR 20:285		
Amended	259	9-11-84
704 KAR 20:290	356	9-11-84
704 KAR 20:300	357	9-11-84
704 KAR 20:305	672	
705 KAR 4:010		
Reprint	379	6-28-84
Amended	646	
705 KAR 4:205	358	9-11-84
705 KAR 7:070	359	
Amended	593	10-9-84
706 KAR 1:010		
Amended	260	
Amended	594	
Amended	700	10-9-84
707 KAR 1:051		
Amended	186	8-7-84
707 KAR 1:055		
Amended	194	8-7-84
803 KAR 2:020		
Amended	64	8-7-84
804 KAR 1:110	97	8-7-84
804 KAR 1:120	910	
804 KAR 2:005		
Amended	67	8-7-84
804 KAR 4:240	98	8-7-84
804 KAR 4:250	360	9-11-84
804 KAR 4:260	675	
804 KAR 7:045		
Amended	68	8-7-84
804 KAR 9:050	361	9-11-84
805 KAR 1:110		
Amended	406	9-1-84
805 KAR 4:087		
Amended	788	
805 KAR 4:110		
Amended	789	
806 KAR 2:090		
Amended	648	
806 KAR 2:095		
Amended	649	
806 KAR 2:096	675	
806 KAR 2:097	676	
806 KAR 2:100	100	8-7-84
806 KAR 6:060	678	
806 KAR 6:070	679	
806 KAR 6:080	681	
806 KAR 12:090	100	8-7-84
806 KAR 12:100	362	
Withdrawn		9-1-84
806 KAR 12:110	683	
806 KAR 15:010		
Amended	261	
Amended	595	10-9-84
806 KAR 15:030	364	
Amended	600	10-9-84

Regulation	11 Ky.R. Page No.	Effective Date
806 KAR 39:070	685	
806 KAR 43:010		
Amended	650	
807 KAR 5:006		
Amended	790	
807 KAR 5:011		
Amended	69	8-7-84
808 KAR 3:050		
Amended	266	9-11-84
808 KAR 11:010		
Amended	168	6-28-84
810 KAR 1:009		
Amended	452	
811 KAR 1:070		
Amended	798	
811 KAR 1:090		
Amended	455	10-9-84
811 KAR 1:105		
Amended	457	10-9-84
811 KAR 1:150		
Amended	458	10-9-84
Amended	800	
811 KAR 1:195		
Amended	801	
815 KAR 7:010		
Amended	268	9-11-84
815 KAR 7:020		
Amended	276	9-11-84
815 KAR 7:080	372	9-11-84
815 KAR 20:055	911	
815 KAR 20:070		
Amended	73	8-7-84
815 KAR 20:120		
Amended	74	8-7-84
Amended	802	
815 KAR 20:150		
Amended	77	8-7-84
815 KAR 45:050		
Amended	805	
815 KAR 45:060	912	
900 KAR 1:011	102	8-7-84
900 KAR 1:030	103	8-7-84
900 KAR 1:040	103	8-7-84
901 KAR 5:050		
Amended	78	8-7-84
902 KAR 1:340		
Reprint	381	
Amended	608	10-9-84
902 KAR 4:030		
Amended	652	
902 KAR 4:060	104	8-7-84
902 KAR 4:070	104	8-7-84
902 KAR 4:080	105	8-7-84
902 KAR 4:090	105	
Amended	395	8-7-84
902 KAR 6:060	374	9-11-84
902 KAR 8:020		
Amended	653	
Amended	806	
902 KAR 8:030	106	8-7-84
Amended	654	
902 KAR 10:080		
Amended	409	9-1-84
902 KAR 10:110	107	9-11-84
902 KAR 12:060	108	8-7-84
902 KAR 12:070	108	8-7-84
902 KAR 12:080		
Amended	279	9-11-84
Amended	655	
Amended	808	
902 KAR 13:100	526	10-9-84
902 KAR 20:006		
Amended	460	10-9-84
902 KAR 20:008		
Amended	465	
Amended	730	
902 KAR 20:016		
Amended	467	10-9-84
902 KAR 20:026		
Amended	811	
902 KAR 20:036		
Amended	819	
902 KAR 20:048		
Amended	824	
902 KAR 20:051		
Amended	832	
902 KAR 20:066		
Amended	476	10-9-84
902 KAR 20:132		
Amended	78	10-9-84
902 KAR 20:160		
Amended	478	10-9-84
902 KAR 20:190	109	
Amended	397	8-7-84
902 KAR 20:200	914	
902 KAR 45:005		
Amended	482	10-9-84
902 KAR 45:130	112	8-7-84
902 KAR 45:140	112	8-7-84
902 KAR 45:150	526	
Amended	700	10-9-84
902 KAR 50:010		
Amended	79	8-7-84
902 KAR 50:020		
Repealed	115	8-7-84
902 KAR 50:060		
Repealed	81	8-7-84
902 KAR 50:070		
Amended	81	8-7-84
902 KAR 50:090	112	8-7-84
902 KAR 50:100	114	8-7-84
902 KAR 50:110	115	8-7-84
903 KAR 5:130		
Amended	838	
903 KAR 6:040		
Amended	841	
904 KAR 1:004		
Amended	280	9-11-84
Amended	842	
904 KAR 1:011		
Amended	846	
904 KAR 1:013		
Amended	81	8-7-84
904 KAR 1:020		
Amended	658	
904 KAR 1:036		
Amended	284	9-11-84
Amended	849	
904 KAR 1:039		
Amended	659	
904 KAR 1:045		
Amended	290	9-11-84
904 KAR 1:055		
Amended	291	9-11-84
904 KAR 1:061		
Amended	854	
904 KAR 1:250		
Amended	292	9-11-84
Amended	856	
904 KAR 2:006		
Amended	858	
904 KAR 2:015		
Amended	293	9-11-84
904 KAR 2:016		
Amended	82	8-7-84
Amended	860	
904 KAR 2:020		
Amended	865	
904 KAR 2:050		
Amended	86	8-7-84
904 KAR 2:055		
Amended	296	9-11-84
904 KAR 2:116	916	
904 KAR 2:140		
Amended	298	9-11-84
Amended	867	
904 KAR 2:150		
Amended	299	9-11-84
Amended	868	
904 KAR 2:160		
Amended	300	9-11-84
Recodified		10-5-84
904 KAR 2:170		
Amended	301	9-11-84
Amended	868	
904 KAR 2:180		
Amended	869	
904 KAR 2:190		
Amended	870	
904 KAR 2:200		
Amended	301	9-11-84
Amended	871	
904 KAR 3:020		
Amended	87	8-7-84
904 KAR 3:035		
Amended	89	8-7-84
904 KAR 3:090		
Amended	302	9-11-84
Amended	872	
904 KAR 5:030		
Amended	660	
904 KAR 5:040		
Repealed	529	10-9-84
904 KAR 5:041	529	10-9-84
904 KAR 5:070		
Amended	495	10-9-84
Recodified		10-9-84
904 KAR 5:080		
Amended	495	10-9-84
Recodified		10-9-84
904 KAR 5:090		
Amended	496	10-9-84
Recodified		10-9-84
904 KAR 5:100		
Amended	196	7-10-84
Recodified		10-5-84
904 KAR 5:130		
Amended	197	7-10-84
Recodified		10-5-84
904 KAR 5:160		
Amended	497	
Amended	702	10-9-84
Recodified		10-9-84
904 KAR 5:200		
Amended	498	10-9-84
Recodified		10-9-84
904 KAR 5:210		
Repealed	530	10-9-84
904 KAR 5:211	530	10-9-84
904 KAR 5:260		
Amended	199	7-10-84
Amended	90	8-7-84
Amended	303	9-11-84
Amended	498	10-9-84
Amended	661	
Amended	873	
904 KAR 5:270	375	9-11-84
Recodified		10-5-84
904 KAR 6:010		
Amended	500	10-9-84
Recodified		10-9-84
904 KAR 6:020		
Amended	304	9-11-84
Amended	501	10-9-84
Amended	663	
904 KAR 6:030		
Repealed	376	9-11-84
904 KAR 6:031	376	9-11-84
904 KAR 6:040		
Amended	91	8-7-84
Amended	502	10-9-84
Recodified		10-9-84
904 KAR 6:050		
Amended	503	10-9-84
Amended	664	
905 KAR 1:080		
Repealed	305	9-11-84
905 KAR 1:170	115	8-7-84
905 KAR 1:180	116	8-7-84
Amended	305	9-11-84
Amended	504	10-9-84
905 KAR 5:010		
Amended	91	8-7-84

Regulation	10 Ky.R. Page No.	Effective Date
905 KAR 5:030	116	8-7-84
905 KAR 6:030	117	8-7-84
905 KAR 7:020	117	8-7-84
905 KAR 7:030		
Amended	875	
905 KAR 7:050	117	8-7-84
905 KAR 7:080	118	8-7-84
Amended	505	10-9-84
Amended	877	
905 KAR 7:090	118	8-7-84
905 KAR 7:100	918	
905 KAR 8:020	376	9-11-84
905 KAR 8:060	119	9-11-84
905 KAR 8:070	530	10-9-84
905 KAR 8:120	119	
Amended	414	9-11-84
906 KAR 1:010	119	8-7-84
906 KAR 1:020	120	8-7-84

Regulation	10 Ky.R. Page No.	Effective Date

Regulation	10 Ky.R. Page No.	Effective Date

KRS Index

KRS Section	Regulation
12.040	600 KAR 2:040
12.080	600 KAR 2:040
Chapter 13A	1 KAR 1:010
13A.100	600 KAR 1:030
13A.130	401 KAR 30:070
	401 KAR 50:016
	402 KAR 3:010
16.505-16.652	105 KAR 1:010
	105 KAR 1:080
17.250	815 KAR 45:050
Chapter 18A	600 KAR 1:040
	600 KAR 1:050
	600 KAR 2:040
35.010	106 KAR 1:040
36.040	106 KAR 1:040
39.480	106 KAR 1:020
Chapter 42	109 KAR 9:010
	600 KAR 1:070
42.455	601 KAR 35:020
44.050	600 KAR 1:070
44.060	600 KAR 1:070
45.750-45.800	1 KAR 3:005
Chapter 45A	200 KAR 5:308
45A.080	815 KAR 45:050
Chapter 61	815 KAR 45:060
61.510-61.702	105 KAR 1:010
61.510-61.705	105 KAR 1:080
61.874	401 KAR 49:010
78.510-78.852	105 KAR 1:010
	105 KAR 1:080
91A.080	806 KAR 2:090
	806 KAR 2:095
	806 KAR 2:096
	806 KAR 2:097
96A.010-96A.370	603 KAR 7:020
	603 KAR 7:030
	603 KAR 7:040
96A.090	603 KAR 7:020
	603 KAR 7:030
96A.095	603 KAR 7:020
	603 KAR 7:030
109.011	401 KAR 49:010
109.011-109.280	401 KAR 49:020
	401 KAR 49:030
	401 KAR 49:040
109.041	401 KAR 49:010
109.071	401 KAR 49:010
109.190	401 KAR 49:010
136.392	806 KAR 2:100
138.655-138.725	601 KAR 9:074
Chapter 141	115 KAR 2:020
146.410	400 KAR 2:030
	400 KAR 2:040
146.420	400 KAR 2:030
146.425	400 KAR 2:010
146.440	400 KAR 2:030
	400 KAR 2:040
146.460	400 KAR 2:010
146.465	400 KAR 2:050
146.470	400 KAR 2:030
146.480	400 KAR 2:050
146.490	400 KAR 2:010
	400 KAR 2:030
146.505	400 KAR 2:030
149.010	402 KAR 3:010
149.510	402 KAR 3:010
150.010	301 KAR 1:075
	301 KAR 2:044
	301 KAR 2:050
	301 KAR 2:190
	301 KAR 2:200
150.015	301 KAR 2:044
	301 KAR 2:180
	301 KAR 2:200
150.025	301 KAR 1:075
	301 KAR 1:140
	301 KAR 2:050

KRS Section	Regulation
150.025 (cont'd)	301 KAR 2:190
	301 KAR 2:200
150.110	301 KAR 1:140
150.120	301 KAR 1:140
150.170	301 KAR 1:075
	301 KAR 1:140
	301 KAR 2:050
	301 KAR 2:200
150.175	301 KAR 1:075
	301 KAR 1:140
	301 KAR 2:200
150.176	301 KAR 2:050
150.180	301 KAR 2:190
150.183	301 KAR 2:190
150.190	301 KAR 1:140
150.235	301 KAR 1:075
	301 KAR 2:200
150.240	301 KAR 2:200
150.250	301 KAR 2:050
150.280	301 KAR 2:190
150.290	301 KAR 2:190
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:190
	301 KAR 2:200
150.320	301 KAR 2:044
	301 KAR 2:190
150.330	301 KAR 2:044
	301 KAR 2:190
	301 KAR 2:200
150.340	301 KAR 2:044
	301 KAR 2:200
150.360	301 KAR 1:075
	301 KAR 2:044
	301 KAR 2:050
	301 KAR 2:190
	301 KAR 2:200
150.440	301 KAR 1:075
150.445	301 KAR 1:075
150.450	301 KAR 1:140
150.470	301 KAR 1:075
150.600	301 KAR 2:200
150.630	301 KAR 2:200
150.640	301 KAR 2:050
151.125	401 KAR 4:200
151.140	401 KAR 4:200
151.150	401 KAR 4:200
151.160	401 KAR 4:200
151.182	401 KAR 4:200
151.184	401 KAR 4:200
151.200	401 KAR 4:200
151.230	401 KAR 4:200
151.240	401 KAR 4:200
151.250	401 KAR 4:200
151.260	401 KAR 4:200
151.280	401 KAR 4:200
151.293	401 KAR 4:200
151.295	401 KAR 4:200
151.297	401 KAR 4:200
151.310	401 KAR 4:200
156.010	706 KAR 1:010
156.031	705 KAR 4:010
	706 KAR 1:010
156.035	703 KAR 1:090
156.095	704 KAR 3:035
156.101	704 KAR 3:325
156.160	703 KAR 1:090
	704 KAR 3:304
	704 KAR 10:022
156.400-156.476	702 KAR 1:005
157.100-157.190	702 KAR 1:005
157.200-157.290	707 KAR 1:051
157.270	707 KAR 1:055
157.320	702 KAR 7:050
157.360	702 KAR 3:190
	707 KAR 1:051
	707 KAR 1:055

KRS Section	Regulation
157.390	702 KAR 3:100
	704 KAR 3:035
157.420	702 KAR 3:100
158.030	702 KAR 7:050
158.060	702 KAR 7:010
158.070	702 KAR 7:010
	704 KAR 3:035
158.140	705 KAR 4:205
158.240	702 KAR 7:050
158.650-158.740	704 KAR 3:005
158.750	704 KAR 3:320
159.030	707 KAR 1:055
159.035	702 KAR 7:050
160.180	702 KAR 1:115
	702 KAR 1:120
161.020	704 KAR 20:005
	704 KAR 20:045
	704 KAR 20:050
	704 KAR 20:060
	704 KAR 20:065
	704 KAR 20:070
	704 KAR 20:076
	704 KAR 20:078
	704 KAR 20:080
	704 KAR 20:085
	704 KAR 20:090
	704 KAR 20:120
	704 KAR 20:145
	704 KAR 20:150
	704 KAR 20:159
	704 KAR 20:210
	704 KAR 20:222
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:240
	704 KAR 20:245
	704 KAR 20:270
	704 KAR 20:285
	704 KAR 20:290
	704 KAR 20:300
161.025	704 KAR 20:005
	704 KAR 20:045
	704 KAR 20:050
	704 KAR 20:060
	704 KAR 20:065
	704 KAR 20:070
	704 KAR 20:076
	704 KAR 20:078
	704 KAR 20:080
	704 KAR 20:085
	704 KAR 20:090
	704 KAR 20:145
	704 KAR 20:150
	704 KAR 20:159
	704 KAR 20:210
	704 KAR 20:222
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:240
	704 KAR 20:245
	704 KAR 20:270
	704 KAR 20:285
	704 KAR 20:290
	704 KAR 20:300
161.030	704 KAR 20:005
	704 KAR 20:035
	704 KAR 20:045
	704 KAR 20:050
	704 KAR 20:060
	704 KAR 20:065
	704 KAR 20:070
	704 KAR 20:076
	704 KAR 20:078
	704 KAR 20:080
	704 KAR 20:085
	704 KAR 20:090
	704 KAR 20:120

KRS Section	Regulation
161.030 (cont'd)	704 KAR 20:145
	704 KAR 20:150
	704 KAR 20:159
	704 KAR 20:210
	704 KAR 20:222
	704 KAR 20:230
	704 KAR 20:235
	704 KAR 20:240
	704 KAR 20:245
	704 KAR 20:270
	704 KAR 20:285
	704 KAR 20:290
	704 KAR 20:300
	704 KAR 20:305
161.046	704 KAR 20:300
161.100	704 KAR 20:120
	704 KAR 20:210
161.115	704 KAR 20:285
161.124	704 KAR 20:035
161.200	702 KAR 7:050
163.020	705 KAR 4:010
163.030	705 KAR 4:010
	705 KAR 7:070
163.087	705 KAR 4:010
163.140	706 KAR 1:010
163.160	706 KAR 1:010
164.740	11 KAR 4:040
164.744	11 KAR 6:010
164.748	11 KAR 4:040
	11 KAR 6:010
164.753	11 KAR 6:010
Chapter 174	600 KAR 2:040
174.080	600 KAR 1:040
	600 KAR 1:050
176.050	603 KAR 7:060
	603 KAR 7:070
176.240	603 KAR 7:060
	603 KAR 7:070
177.830-177.890	603 KAR 4:035
177.905-177.950	603 KAR 3:051
177.972	601 KAR 35:020
177.976	601 KAR 35:020
177.977	601 KAR 35:020
177.979	601 KAR 35:020
	601 KAR 35:040
177.980	601 KAR 35:040
183.120	602 KAR 15:020
183.200-183.213	602 KAR 15:010
183.505	602 KAR 15:020
183.764	602 KAR 15:020
186.021	806 KAR 39:070
186.042	601 KAR 9:011
186.057	601 KAR 35:020
	601 KAR 35:050
186.173	601 KAR 9:013
186.560	601 KAR 13:050
186A.040	806 KAR 39:070
189.221	603 KAR 5:140
189.222	603 KAR 5:140
189.270	601 KAR 1:015
189A.040	601 KAR 13:050
189A.070	601 KAR 13:050
190.010-190.080	605 KAR 1:150
Chapter 194	902 KAR 1:340
194.025	900 KAR 1:011
194.030	900 KAR 1:011
	900 KAR 1:030
	902 KAR 16:010
	903 KAR 6:010
	903 KAR 6:040
	904 KAR 1:250
	904 KAR 2:140
	904 KAR 2:150
	904 KAR 2:180
	904 KAR 2:190
	904 KAR 2:200
	904 KAR 3:090
	904 KAR 6:020
	904 KAR 6:050
	905 KAR 1:180
	906 KAR 1:010
	906 KAR 1:020

KRS Section	Regulation
194.040	900 KAR 1:011
194.050	900 KAR 1:011
	902 KAR 4:060
	904 KAR 2:116
	904 KAR 3:020
	904 KAR 3:035
194.060	905 KAR 1:180
Chapter 196	501 KAR 6:010
Chapter 197	501 KAR 6:010
Chapter 198B	815 KAR 7:010
	815 KAR 7:020
	815 KAR 7:080
199.011-199.375	905 KAR 1:180
199.420-199.990	905 KAR 1:180
200.080-200.120	905 KAR 1:180
200.460-200.490	902 KAR 4:070
Chapter 202A	905 KAR 7:030
	905 KAR 7:080
	905 KAR 7:100
Chapter 205	904 KAR 2:140
205.010	904 KAR 2:006
205.200	902 KAR 16:010
	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:150
205.201	905 KAR 8:060
	905 KAR 8:070
205.201-205.204	905 KAR 1:180
	905 KAR 8:020
205.204	905 KAR 8:060
	905 KAR 8:070
205.210	904 KAR 2:016
205.220	904 KAR 2:050
	904 KAR 2:150
205.231	904 KAR 2:055
	904 KAR 2:150
205.245	902 KAR 16:010
	904 KAR 2:015
205.455-205.465	905 KAR 1:180
	905 KAR 8:020
	905 KAR 8:120
205.510-205.630	107 KAR 1:040
205.520	902 KAR 16:010
	904 KAR 1:004
	904 KAR 1:011
	904 KAR 1:013
	904 KAR 1:036
	904 KAR 1:039
	904 KAR 1:045
	904 KAR 1:055
	904 KAR 1:061
	904 KAR 1:250
	904 KAR 2:160
205.550	904 KAR 1:020
205.560	904 KAR 1:020
205.795	904 KAR 2:020
	904 KAR 2:170
Chapter 208	905 KAR 1:180
	905 KAR 7:030
	905 KAR 7:050
	905 KAR 7:080
208.400	905 KAR 7:020
208.410	905 KAR 7:020
	905 KAR 7:100
208.530	905 KAR 7:020
Chapter 209	905 KAR 1:180
209.030	905 KAR 5:010
	905 KAR 5:030
209.160	905 KAR 5:010
Chapter 210	902 KAR 12:080
210.290	900 KAR 1:040
210.370-210.460	902 KAR 6:060
210.700-210.760	902 KAR 12:060
	902 KAR 12:070
	905 KAR 7:090
211.170	902 KAR 8:030
211.180	902 KAR 4:060
	902 KAR 4:080
	902 KAR 45:150
211.350-211.380	902 KAR 10:080
	902 KAR 10:110
211.900	902 KAR 4:090

KRS Section	Regulation
211.905	902 KAR 4:090
211.964	902 KAR 13:100
211.990	902 KAR 10:080
	902 KAR 10:110
211.994	902 KAR 4:090
Chapter 212	902 KAR 8:020
212.170	902 KAR 8:030
212.210	902 KAR 45:150
212.870	902 KAR 8:030
212.990	902 KAR 45:150
Chapter 213	901 KAR 5:050
213.190	905 KAR 1:170
214.155	902 KAR 4:030
215.520-215.600	902 KAR 20:200
Chapter 216B	902 KAR 1:340
216B.010-216B.130	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:016
	902 KAR 20:026
	902 KAR 20:036
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:066
216B.010-216B.131	902 KAR 20:132
	902 KAR 20:160
	902 KAR 20:190
	902 KAR 20:200
216B.990	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:016
	902 KAR 20:026
	902 KAR 20:036
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:066
	902 KAR 20:132
	902 KAR 20:160
	902 KAR 20:190
	902 KAR 20:200
217.005-217.215	902 KAR 45:130
	902 KAR 45:140
	902 KAR 50:090
217.808-217.812	902 KAR 45:140
217.992	902 KAR 45:130
	902 KAR 45:140
	902 KAR 50:090
217C.010-217C.990	902 KAR 50:010
	902 KAR 50:070
	902 KAR 50:100
	902 KAR 50:110
219.011-219.081	902 KAR 45:005
	902 KAR 45:140
219.991	902 KAR 45:005
223.170	401 KAR 6:200
223.180	401 KAR 6:200
223.190	401 KAR 6:200
223.210	401 KAR 6:200
Chapter 224	401 KAR 5:050
	401 KAR 5:055
	401 KAR 5:060
	401 KAR 5:065
	401 KAR 5:070
	401 KAR 50:015
	401 KAR 59:212
	401 KAR 61:165
224.005	401 KAR 30:070
	401 KAR 49:010
224.011	401 KAR 5:026
	401 KAR 5:200
224.012	401 KAR 100:020
224.020	401 KAR 5:026
	401 KAR 5:200
224.032	401 KAR 6:200
224.033	401 KAR 5:200
	401 KAR 30:010
	401 KAR 30:070
	401 KAR 32:020
	401 KAR 32:100
224.034	401 KAR 5:200
224.060	401 KAR 5:026
	401 KAR 5:200
	401 KAR 100:020

KRS Section	Regulation
224.071	401 KAR 32:020
	401 KAR 32:050
	401 KAR 100:020
224.073	401 KAR 5:200
224.075	401 KAR 5:200
224.081	401 KAR 5:200
224.083	401 KAR 5:200
224.110	401 KAR 5:200
224.135	401 KAR 5:200
224.140	401 KAR 5:200
224.320	401 KAR 50:016
	401 KAR 57:011
	401 KAR 57:035
	401 KAR 57:040
	401 KAR 59:036
	401 KAR 59:049
	401 KAR 59:099
	401 KAR 59:131
	401 KAR 59:136
	401 KAR 59:141
	401 KAR 59:146
	401 KAR 59:171
	401 KAR 59:196
	401 KAR 59:201
	401 KAR 59:213
	401 KAR 59:216
	401 KAR 59:221
	401 KAR 59:275
	401 KAR 59:280
	401 KAR 59:300
	401 KAR 59:305
	401 KAR 100:020
224.330	401 KAR 50:016
	401 KAR 57:011
	401 KAR 57:035
	401 KAR 57:040
	401 KAR 59:036
	401 KAR 59:049
	401 KAR 59:099
	401 KAR 59:131
	401 KAR 59:136
	401 KAR 59:141
	401 KAR 59:146
	401 KAR 59:171
	401 KAR 59:196
	401 KAR 59:201
	401 KAR 59:213
	401 KAR 59:216
	401 KAR 59:221
	401 KAR 59:275
	401 KAR 59:280
	401 KAR 59:300
	401 KAR 59:305
	401 KAR 100:020
224.340	401 KAR 50:016
	401 KAR 57:011
	401 KAR 57:035
	401 KAR 57:040
	401 KAR 59:036
	401 KAR 59:049
	401 KAR 59:099
	401 KAR 59:131
	401 KAR 59:136
	401 KAR 59:141
	401 KAR 59:146
	401 KAR 59:171
	401 KAR 59:196
	401 KAR 59:201
	401 KAR 59:213
	401 KAR 59:216
	401 KAR 59:221
	401 KAR 59:275
	401 KAR 59:280
	401 KAR 59:300
	401 KAR 59:305
224.710	401 KAR 100:020
224.830	401 KAR 100:020
224.830-224.877	401 KAR 31:040
	401 KAR 31:160
	401 KAR 31:170
	401 KAR 32:020
	401 KAR 32:050
	401 KAR 32:100
224.830-224.889	401 KAR 30:070
224.835	401 KAR 30:010
	401 KAR 49:010
	401 KAR 49:020
	401 KAR 49:030
	401 KAR 49:040
224.842	401 KAR 49:010
	401 KAR 49:020
	401 KAR 49:030
	401 KAR 100:020
224.846	401 KAR 30:010
224.855-224.889	401 KAR 30:010
224.862	401 KAR 100:020
224.864	401 KAR 100:020
224.866	401 KAR 100:020
224.868	401 KAR 100:020
224.873	401 KAR 100:020
224.886	401 KAR 100:020
224.887	401 KAR 49:010
	401 KAR 49:020
	401 KAR 49:030
	401 KAR 49:040
224.888	401 KAR 49:010
	401 KAR 49:020
	401 KAR 49:030
	401 KAR 49:040
224.895	401 KAR 100:020
224.994	401 KAR 30:070
	401 KAR 31:040
	401 KAR 31:160
	401 KAR 31:170
	401 KAR 32:020
	401 KAR 32:050
	401 KAR 32:100
230.210-230.360	810 KAR 1:009
230.620	811 KAR 1:150
230.630	811 KAR 1:070
	811 KAR 1:090
	811 KAR 1:105
230.640	811 KAR 1:150
	811 KAR 1:070
	811 KAR 1:090
	811 KAR 1:105
230.650	811 KAR 1:150
230.660	811 KAR 1:150
230.700	811 KAR 1:150
	811 KAR 1:070
230.710	811 KAR 1:090
230.720	811 KAR 1:070
230.730	811 KAR 1:105
230.750	811 KAR 1:105
241.060	811 KAR 1:195
	804 KAR 4:240
	804 KAR 9:050
241.065	804 KAR 9:050
241.075	804 KAR 9:050
243.030	804 KAR 4:260
	804 KAR 7:045
	804 KAR 9:050
243.040	804 KAR 4:260
243.260	804 KAR 4:250
243.290	804 KAR 4:250
244.050	804 KAR 1:120
244.130	804 KAR 1:120
	804 KAR 2:005
244.240	804 KAR 1:110
	804 KAR 1:120
244.440	804 KAR 4:240
244.500	804 KAR 1:120
244.590	804 KAR 2:005
247.232	302 KAR 16:010
	302 KAR 16:020
	302 KAR 16:030
	302 KAR 16:040
247.234	302 KAR 16:010
	302 KAR 16:020
	302 KAR 16:030
	302 KAR 16:040
247.236	302 KAR 16:050
	302 KAR 16:020
	302 KAR 16:040
250.366	12 KAR 4:080
	12 KAR 4:090
	12 KAR 4:100
	12 KAR 4:120
	12 KAR 4:130
	12 KAR 4:160
	12 KAR 4:170
250.391	12 KAR 4:130
	12 KAR 4:150
250.396	12 KAR 4:130
	12 KAR 4:140
250.401	12 KAR 4:130
250.406	12 KAR 4:110
250.411	12 KAR 4:170
251.610	302 KAR 34:010
251.640	302 KAR 34:010
257.020	302 KAR 20:150
	302 KAR 20:160
	302 KAR 20:170
260.755-260.845	12 KAR 5:020
	12 KAR 5:030
	12 KAR 5:040
260.992	12 KAR 5:020
	12 KAR 5:030
	12 KAR 5:040
273.410-273.468	905 KAR 6:030
Chapter 278	807 KAR 5:006
	807 KAR 5:011
290.070	808 KAR 3:050
290.100	808 KAR 3:050
290.225	808 KAR 3:050
290.585	808 KAR 3:050
290.715	808 KAR 3:050
304.2-100	806 KAR 15:030
304.2-165	806 KAR 12:090
304.2-290	806 KAR 6:070
304.3-200	806 KAR 12:090
304.4-010	806 KAR 2:095
	806 KAR 2:097
304.6-070	806 KAR 6:080
304.6-130-304.6-180	806 KAR 6:070
304.6-140	806 KAR 6:060
304.6-145	806 KAR 6:060
304.6-180	806 KAR 6:060
304.7-240	806 KAR 15:010
	806 KAR 15:030
304.9-160	806 KAR 15:010
304.12-010	806 KAR 12:090
304.12-020	806 KAR 15:030
	806 KAR 39:070
304.12-030	806 KAR 15:030
304.12-080	806 KAR 2:096
304.12-085	806 KAR 12:110
304.12-090	806 KAR 2:096
304.12-220	806 KAR 12:090
304.12-230	806 KAR 12:090
304.13-063	601 KAR 13:040
304.14-120	806 KAR 15:030
304.15-115	806 KAR 15:030
304.15-130	806 KAR 15:030
304.15-342	806 KAR 6:060
	806 KAR 12:110
304.15-390	806 KAR 15:010
	806 KAR 15:030
304.15-410	806 KAR 6:060
	806 KAR 6:070
304.17-275	806 KAR 6:080
304.20-070	806 KAR 12:090
304.20-150—304.20-180	806 KAR 12:090
304.29-590	806 KAR 12:090
304.32-270	806 KAR 12:090
304.38-200	806 KAR 12:090
304.39-070	806 KAR 12:090
304.39-080	806 KAR 39:070
304.39-085	806 KAR 39:070
304.43-080	806 KAR 43:010
304.43-130	806 KAR 12:090
311.271	201 KAR 9:021
311.530-311.610	201 KAR 9:024
311.530-311.620	201 KAR 9:021
	201 KAR 9:023
	201 KAR 9:025
	201 KAR 9:031

KRS Section	Regulation
311.530-311.620 (cont'd)	201 KAR 9:041
	201 KAR 9:051
	201 KAR 9:061
	201 KAR 9:071
	201 KAR 9:081
	201 KAR 9:082
311.990	201 KAR 9:021
	201 KAR 9:023
	201 KAR 9:024
	201 KAR 9:025
	201 KAR 9:031
	201 KAR 9:041
	201 KAR 9:051
	201 KAR 9:061
	201 KAR 9:071
	201 KAR 9:081
	201 KAR 9:082
Chapter 318	815 KAR 20:055
	815 KAR 20:070
	815 KAR 20:120
	815 KAR 20:150
322.360	815 KAR 45:050
326.020	201 KAR 13:040
	201 KAR 13:050
327.010	201 KAR 22:010
327.040	201 KAR 22:106
	201 KAR 22:110
327.050	201 KAR 22:020
	201 KAR 22:031
	201 KAR 22:040
327.060	201 KAR 22:031
	201 KAR 22:070
327.070	201 KAR 22:052
327.080	201 KAR 22:031
327.090	201 KAR 22:052
335.010-335.150	201 KAR 23:030
Chapter 338	803 KAR 2:020
338.051	600 KAR 1:060
338.061	600 KAR 1:060
341.005-341.990	904 KAR 5:260
341.260	904 KAR 5:030
341.275	903 KAR 5:200
341.282	903 KAR 5:200
341.350	903 KAR 5:090
	903 KAR 5:100
341.360	903 KAR 5:090
341.370	903 KAR 5:070
	903 KAR 5:080
341.380	903 KAR 5:100
	903 KAR 5:270
341.440	903 KAR 5:130
341.450	903 KAR 5:130
341.500	903 KAR 5:160
341.510	903 KAR 5:160
341.530	903 KAR 5:070
	903 KAR 5:080
346.130	107 KAR 1:040
346.140	107 KAR 1:040
Chapter 350	405 KAR 7:020
350.010	405 KAR 7:030
350.020	405 KAR 10:035
350.028	405 KAR 7:030
350.057	405 KAR 7:030
350.060	405 KAR 7:030
	405 KAR 10:035
	601 KAR 35:020
350.062	405 KAR 10:035
	405 KAR 16:020
350.064	405 KAR 10:035
350.068	405 KAR 10:035
350.093	405 KAR 16:020
350.100	405 KAR 16:020
350.110	405 KAR 16:020
350.151	405 KAR 7:030
	405 KAR 10:035
350.405	405 KAR 16:020
350.410	405 KAR 16:020
350.435	405 KAR 16:020
350.450	405 KAR 16:020
350.465	405 KAR 7:030
	405 KAR 10:035
	405 KAR 16:020

KRS Section	Regulation
351.175	601 KAR 35:020
351.350	805 KAR 4:087
	805 KAR 4:110
351.990	805 KAR 4:087
	805 KAR 4:110
353.520	805 KAR 1:110
Chapter 424	400 KAR 2:050
Chapter 439	501 KAR 6:010
HB 38	115 KAR 2:020
HB 931, 1980	1 KAR 3:005
SB 20	601 KAR 13:050
SB 107	601 KAR 1:015
SB 238	603 KAR 7:050
c. 184, 1982 Acts	603 KAR 7:050
Ex. Order 80-285	1 KAR 3:005

KRS Section	Regulation

Subject Index

AERONAUTICS
Airport Development
Loans; 602 KAR 15:010
State aid; 602 KAR 15:020 and E

AGRICULTURAL EXPERIMENT STATION
Fertilizer; 12 KAR 4:080 to 12 KAR 4:170
Milk, cream; 12 KAR 5:020 to 12 KAR 5:040

AGRICULTURE
Amusement Rides
Licensing fee; 302 KAR 16:050 and E
Operation; 302 KAR 16:020 and E
Operating permit; 302 KAR 16:010 and E
Safety violations; 302 KAR 16:030 and E; 302 KAR 16:040 and E
Grain Insurance, Grain Dealers
Definitions; 302 KAR 34:010 and E
Livestock Sanitation
Communicable disease, restriction of transportation; 302 KAR 20:150 and E
Equine movement; 302 KAR 20:170 and E
Viral equine arteritis; 302 KAR 20:160 and E

AIRCRAFT, STATE
Use of, air transport; 106 KAR 1:040

AIR POLLUTION
Existing Source Standards
Aluminum reduction plants; 401 KAR 61:165
General Administrative Procedures
Reference documents; 401 KAR 50:015; 401 KAR 50:016 and E
Hazardous Pollutants
Asbestos standards; 401 KAR 57:011
Benzene leaks; 401 KAR 57:040
Equipment leaks; 401 KAR 57:035
New Source Standards
Beverage can coating; 401 KAR 59:216
Bulk gasoline terminals; 401 KAR 59:099
Diammonium phosphate plants; 401 KAR 59:141
Grain elevators; 401 KAR 59:275
Graphic arts facilities; rotogravure, flexography; 401 KAR 59:212
Large appliance coating; 401 KAR 59:201
Lime plants; 401 KAR 59:171
Metal coil coating; 401 KAR 59:221
Metal furniture coating; 401 KAR 59:196
Petroleum refinery equipment leaks; 401 KAR 59:049
Pressure sensitive tape, label surface coating; 401 KAR 59:300
Publication, rotogravure printing; 401 KAR 59:213
Sulfuric acid manufacturing plants; 401 KAR 59:036
Superphosphoric acid plants; 401 KAR 59:136
Synthetic fiber production facilities; 401 KAR 59:280
Synthetic organic chemical manufacturing industry equipment leaks; 401 KAR 59:305
Triple superphosphate plants; 401 KAR 59:146
Wet process phosphoric acid plants; 401 KAR 59:131

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits
Rebates, gift certificates; 804 KAR 1:120
Wine tastings; 804 KAR 1:110
Advertising Malt Beverages
Outside signs; 804 KAR 2:005
Licensing
Brand registration; 804 KAR 4:240; 804 KAR 4:250
Horse race track; 804 KAR 4:260
Quotas
Retail drink liquor license; 804 KAR 9:050 and E
Retail Premises
Convention center; 804 KAR 7:045

AMUSEMENT RIDES
(See AGRICULTURE)

CAPITAL CONSTRUCTION
Committee, procedures, records; 1 KAR 3:005

CHILDREN'S SERVICES
(See HEALTH SERVICES)

CONSUMER PROTECTION
Recreational, retirement use land; disclosure of costs; 40 KAR 2:010

CORRECTIONS
Office of the Secretary
Policies and procedures; 501 KAR 6:010 and E

CRIME VICTIMS COMPENSATION BOARD
Medical Assistance Act, cooperation; 107 KAR 1:030

DEVELOPMENT FINANCE
Area development fund; 109 KAR 9:010 and E

DISASTER, EMERGENCY SERVICES
Fund; 106 KAR 1:020

EDUCATION
Exceptional
Exceptional, handicapped; programs for; 707 KAR 1:051; 707 KAR 1:055
Instruction
Elementary, secondary; 704 KAR Chapter 10
Instructional services; 704 KAR Chapter 3
Teacher certification; 704 KAR Chapter 20
Local Services
Buildings, grounds; 702 KAR Chapter 4
School district finance; 702 KAR Chapter 3
Textbook program plan; 702 KAR 1:005
Pupil Personnel Services
Food service programs; 703 KAR Chapter 1
Terms, attendance, operation; 703 KAR Chapter 2
Vocational Education
Adult education; 705 KAR Chapter 7
Instructional programs; 705 KAR Chapter 4
Vocational Rehabilitation
Administration; 706 KAR Chapter 1

EDUCATION, LOCAL SERVICES
Buildings, Grounds
Contract; architect, engineer; 702 KAR 4:030
School District Finance
Class sizes; 702 KAR 3:190
Data; 702 KAR 3:100
Textbook program plan; 702 KAR 1:005

EMPLOYEES, STATE
Retirement
Contributions, interest rates; 105 KAR 1:010

EMPLOYMENT SERVICES
(Recodified to Title 903, 10-9-84)
Program Administration, Technical Services
Job training partnership act; 903 KAR 6:040; 904 KAR 6:040 and E
Occupational training, experience project; 904 KAR 6:030E
Repeal; 904 KAR 6:031
Veterans' benefits; 904 KAR 6:050 and E
Weatherization assistance, low income; 904 KAR 6:020 and E
Work incentive; 904 KAR 6:010 and E
Unemployment Insurance
Appeals; 903 KAR 5:130; 904 KAR 5:130E
Benefits, financing; 904 KAR 5:200
Employer contributions; 904 KAR 5:030
Fund payments; 904 KAR 5:160
Labor dispute; 904 KAR 5:090
Procedures; 904 KAR 5:260 and E
Protesting claim; 904 KAR 5:080
Repeal; 904 KAR 5:041; 904 KAR 5:211

EMPLOYMENT SERVICES (cont'd)
Reporting requirements; 904 KAR 5:100E
Separation for cause; 904 KAR 5:070
Weekly benefit rates; 904 KAR 5:270 and E

ENERGY
Alternate energy development; 115 KAR 2:020

ENVIRONMENTAL PROTECTION
(Also see NATURAL RESOURCES)
Hazardous substance designation, spill notification; 401 KAR 100:020

EXCEPTIONAL, HANDICAPPED EDUCATION
Home, hospital instruction; 707 KAR 1:055
Programs; 707 KAR 1:051

FERTILIZER
Analysis, guaranteed; 12 KAR 4:090
Chlorine, maximum guarantee; 12 KAR 4:170
Investigational allowances; 12 KAR 4:130
Nutrients, guaranteed; 12 KAR 4:160
Nutrients, plant; 12 KAR 4:080
Nutrients, slowly released; 12 KAR 4:100
Penalties, monetary; 12 KAR 4:140
Percentage; 12 KAR 4:120
Sampling procedures; 12 KAR 4:150
Terms, definitions; 12 KAR 4:110

FINANCE, ADMINISTRATION
KERS; 105 KAR 1:010; 105 KAR 1:080
Purchasing; 200 KAR 5:308

FINANCIAL INSTITUTIONS
Thrift Institutions
Conduct; 808 KAR 3:050

FIRE DEPARTMENTS, LOCAL
(See HOUSING, BUILDINGS AND CONSTRUCTION)

FISH, WILDLIFE
Fish
Commercial permit; 301 KAR 1:140 and E
Gigging, etc.; 301 KAR 1:075
Game
Falconry, raptor propagation; 301 KAR 2:190
Hunter education; 301 KAR 2:180
Land Between the Lakes hunting rules; 301 KAR 2:050
Migratory bird hunting seasons; 301 KAR 2:200 and E
Migratory wildlife; 301 KAR 2:044 and E

FOOD STAMP PROGRAM
(See SOCIAL INSURANCE)

FORESTRY
Reference material; 402 KAR 3:010 and E

GENERAL GOVERNMENT
Occupations, professions; various; Title 201

GRAIN INSURERS, GRAIN DEALERS
(See AGRICULTURE)

HEALTH SERVICES
Certificate of Need and Licensure
Chemical dependency treatment; 902 KAR 20:160
Day health care; 902 KAR 20:066
Expenditure minimums; 902 KAR 20:132
Hospitals; 902 KAR 20:016
Intermediate care; 902 KAR 20:051
License, fees; 902 KAR 20:008
Long term care; 902 KAR 20:200
Nursing homes; 902 KAR 20:048
Personal care homes; 902 KAR 20:036
Process; 902 KAR 20:006 and E
Rehabilitation agency services; 902 KAR 20:190
Skilled nursing facilities; 902 KAR 20:026

HEALTH SERVICES (cont'd)
Emergency Medical Technicians
Certificates, emergency extension; 902 KAR 13:100 and E
Food and Cosmetics
Evaluation, standardization procedures; 902 KAR 45:140 and E
Food service code; 902 KAR 45:005
Inspector's manual for state food and drug officials; 902 KAR 45:130 and E
School sanitation; 902 KAR 45:150
Local Health Departments
Merit system; 902 KAR 8:030 and E
Policies, procedures; 902 KAR 8:020 and E
Maternal and Child Health
Crippled children; 902 KAR 4:070 and E
Disabled children; 902 KAR 4:080 and E
Family planning program; 902 KAR 4:050E
Inborn errors of metabolism, tests; 902 KAR 4:030
Lead poisoning prevention; 902 KAR 4:090
WIC; 902 KAR 4:060 and E
Mental Health-Mental Retardation Boards
Manuals; 902 KAR 6:060
Mentally Ill/Mentally Retarded
"Means test"; 902 KAR 12:070 and E
Per diem rate; 902 KAR 12:060 and E
Policies, procedures; 902 KAR 12:080 and E
Milk and Milk Products
Adulteration; 902 KAR 50:090 and E
Definitions; 902 KAR 50:010
Grade A standards; 902 KAR 50:110 and E
Sanitation ratings; 902 KAR 50:100 and E
Standards of identity; 902 KAR 50:070
Sanitation
Onsite sewage disposal; 902 KAR 10:080; 902 KAR 10:110
State health plan; 902 KAR 1:340E

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Educational institution participation requirements; 11 KAR 4:040
Work Study Program
Program; 11 KAR 6:010

HIGHWAYS
Maintenance
Recyclers; 603 KAR 3:051
Mass Transportation
Capital assistance program; 603 KAR 7:040 and E
Carpool project; 603 KAR 7:070 and E
Elderly, handicapped program; 603 KAR 7:030 and E
Local rail service program; 603 KAR 7:050 and E
Non-urbanized program; 603 KAR 7:020 and E
Urbanized area planning; 603 KAR 7:060 and E
Traffic
Building material, hauling; 603 KAR 5:130 and E
Hauling materials; 603 KAR 5:140

HOUSING, BUILDINGS AND CONSTRUCTION
Building Code
Administration, enforcement; 815 KAR 7:010
Building code; 815 KAR 7:020
Sprinkler contractors; 815 KAR 7:080 and E
Fire Departments, Local
Survivor benefits; 815 KAR 45:060
Training facility grants; 815 KAR 45:050
Plumbing
Fixtures; 815 KAR 20:070
Inspection, tests; 815 KAR 20:150
Water heater devices; 815 KAR 20:055
Water supply; 815 KAR 20:120

HUMAN RESOURCES
Administrative Services
Post-audit appeal; 900 KAR 1:011 and E
Vital statistics; 901 KAR 5:050
Employment Services (Recodified to Title 903, 10-9-84)
Program administration, technical services; 904 KAR 6:010 to 904 KAR 6:050
Unemployment insurance; 904 KAR 5:030 to 904 KAR 5:270
Health Services
Certificate of need and licensure; 902 KAR 20:006 to 902 KAR 20:190
Emergency medical technicians; 902 KAR 13:100 and E
Food, cosmetics; 902 KAR 45:005 to 902 KAR 45:150
Local health departments; 902 KAR 8:020 to 902 KAR 8:030
Maternal, child health; 902 KAR 4:030 to 902 KAR 4:090
Mental health-mental retardation boards; 902 KAR 6:060
Mentally ill/mentally retarded; 902 KAR 12:060 to 902 KAR 12:080
Milk, milk products; 902 KAR 50:010 to 902 KAR 50:110
Sanitation; 902 KAR 10:080 to 902 KAR 10:110
State health plan; 902 KAR 1:340E
Inspector General
Audits; 906 KAR 1:010 and E
Licensing, regulation; 906 KAR 1:020 and E
Ombudsman's Office
Complaint review; 900 KAR 1:030 and E
Guardianship responsibilities; 900 KAR 1:040 and E
Social Insurance
Food stamp program; 904 KAR 3:020 to 904 KAR 3:090
Medical assistance; 904 KAR 1:004 to 904 KAR 1:250
Public assistance; 904 KAR 2:006 to 904 KAR 2:200
Social Services
Aging services; 905 KAR 8:010 to 905 KAR 8:130
Child welfare; 905 KAR 1:150 to 905 KAR 1:180
Children's residential services; 905 KAR 7:010 to 905 KAR 7:100
Community action agencies; 905 KAR 6:020 to 905 KAR 6:030
Spouse abuse, crisis centers; 905 KAR 5:010 to 905 KAR 5:030

INSTRUCTION
Elementary, Secondary
Standards; 704 KAR 10:022
Instructional Services
Annual in-service plan; 704 KAR 3:035
Educational Improvement Act; 704 KAR 3:005
Industrial leadership act; 704 KAR 3:325
Mathematics, reading; 704 KAR 3:320
Program of studies; 704 KAR 3:304
Teacher Certification
Certification, adjunct instructor; 704 KAR 20:300
Certification, elementary; 704 KAR 20:085; 704 KAR 20:090; 704 KAR 20:290
Certification, information deleted; 704 KAR 20:285
Certification, middle grades; 704 KAR 20:076; 704 KAR 20:078, 704 KAR 20:080
Emergency certificate; 704 KAR 20:120
Exceptional children; 704 KAR 20:270
Hearing impaired; 704 KAR 20:230
Industrial education; 704 KAR 20:222
Internship program; 704 KAR 20:045
Learning disorders; 704 KAR 20:235
Media librarians; 704 KAR 20:145
Media specialists; 704 KAR 20:150
Music; 704 KAR 20:159
Out-of-state preparation; 704 KAR 20:035

INSTRUCTION (cont'd)
Preparation program approval; 704 KAR 20:005
Provisional certification; 704 KAR 20:070; 704 KAR 20:080
Renewals; 704 KAR 20:060
Speech disorders; 704 KAR 20:240
Standard high school certificate; 704 KAR 20:065
Substitute teachers; 704 KAR 20:210
Testing prerequisites; 704 KAR 20:045
Time limit; 704 KAR 20:050
Trainable mentally handicapped; 704 KAR 20:245
Written examination prerequisites; 704 KAR 20:305

INSURANCE
Administration
Accounting, reporting requirements; 806 KAR 2:095
Fee; city, urban insurance tax; 806 KAR 2:090
KRS 136.392 surcharge; 806 KAR 2:100
Municipal premium taxes; 806 KAR 2:096; 806 KAR 2:097
Assets, Liabilities
Reserve liabilities; 806 KAR 6:060
Reserve standards; 806 KAR 6:080
Valuation; 806 KAR 6:070
Contracts, Life, Annuity
Variable life; 806 KAR 15:030
Variable annuity; 806 KAR 15:010
Motor Vehicle Reparations (No-Fault)
Proof of insurance; 806 KAR 39:070
Prepaid Dental Plan Organizations
Agent license; 806 KAR 43:010
Trade Practices, Frauds
Mass merchandising; 806 KAR 12:100
Mortality tables; 806 KAR 12:110
Unfair claims; 806 KAR 12:090

LABOR
Occupational safety, health; 803 KAR 2:020

LAW
Consumer protection; 40 KAR 2:010

LEGISLATIVE RESEARCH COMMISSION
Capital construction; 1 KAR 3:005

LIVESTOCK SANITATION
(See AGRICULTURE)

LOCAL GOVERNMENT
Development Finance
Area development fund; 109 KAR 9:010 and E

LOCAL SERVICES (EDUCATION)
Board member qualifications; 702 KAR 1:120 and E

MEDICAL ASSISTANCE
(See SOCIAL INSURANCE)

MEDICAL LICENSURE
Application; 201 KAR 9:024
Disciplinary proceedings; 201 KAR 9:081
Endorsement; 201 KAR 9:023
Examinations; 201 KAR 9:031
Fee schedule; 201 KAR 9:041
KRS 311.571; 201 KAR 9:025
Licenses; 201 KAR 9:051
Licenses, limited; 201 KAR 9:061
Permits; 201 KAR 9:071
Proceedings, informal; 201 KAR 9:082
Schools; 201 KAR 9:021 and E

MILITARY AFFAIRS
Air transport, use of state aircraft; 106 KAR 1:040

MILK, CREAM
Sampling, weighing; 12 KAR 5:040
Testing; 12 KAR 5:020
Test samples; 12 KAR 5:030

MILITARY AFFAIRS
Disaster, emergency services; 106 KAR 1:020

MINES, MINERALS
Explosives, Blasting
Explosives; 805 KAR 4:087
Explosive charges, electric blasting; 805 KAR 4:110
Oil, Gas
Underground injection control; 805 KAR 1:110

MOTOR VEHICLE COMMISSION
Temporary sales location: 605 KAR 1:150

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air pollution; 401 KAR Chapters 50 through 63
Waste management; 401 KAR Chapters 30 through 49; 401 KAR Chapter 100
Water; 401 KAR Chapters 4, 5, and 6
Natural Resources
Forestry; 402 KAR 3:010
Nature Preserves Commission; 400 KAR Chapter 2
Reclamation
Bonds, insurance; requirements for; 401 KAR 10:035
Oil shale; 405 KAR Chapter 30
Provisions, general; 405 KAR Chapter 7
Strip mining; 405 KAR Chapter 1
Surface mining, standards for; 405 KAR 16:020
Underground mining, surface effects; 405 KAR Chapter 3

NATURE PRESERVES COMMISSION
Dedication, registration; 400 KAR 2:030
Definitions; 400 KAR 2:010
Hearings, appeals; 400 KAR 2:050
Nature preserves; 400 KAR 2:040

OCCUPATIONAL SAFETY, HEALTH
Workplace Standards
29 CFR Part 1910; 803 KAR 2:020

OCCUPATIONS, PROFESSIONS
Ophthalmic dispensers; 201 KAR 13:040; 201 KAR 13:050
Physical therapy; 201 KAR 22:010 to 201 KAR 22:110

OPHTHALMIC DISPENSERS
Apprentices; 201 KAR 13:050
Licensing; application, examination, temporary permit; 201 KAR 13:040

PHYSICAL THERAPY
Assistants; certification, renewal; 201 KAR 22:106; 201 KAR 22:110
Foreign trained; 201 KAR 22:070
Licensing procedure; 201 KAR 22:031
Licensure, method of applying; 201 KAR 22:020
Objectives; 201 KAR 22:010
Refusal, revocation, etc.; 201 KAR 22:052
Renewing licenses; 201 KAR 22:040

PLUMBING
(See HOUSING, BUILDINGS AND CONSTRUCTION)

PUBLIC ASSISTANCE
(See SOCIAL INSURANCE)

PUBLIC PROTECTION, REGULATION
Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR 1:110; 804 KAR 1:120
Advertising malt beverages; 804 KAR 2:005
Licensing; 804 KAR 4:240 to 804 KAR 4:260
Quotas; 804 KAR 9:050 and E
Retail premises; 804 KAR 7:045
Crime Victims Compensation Board; 107 KAR 1:030

PUBLIC PROTECTION REGULATION (cont'd)
Financial Institutions
Thrift institutions; 808 KAR 3:050
Housing, Buildings and Construction
Building code; 815 KAR Chapter 7
Plumbing; 815 KAR 20:055 to 815 KAR 20:150
Insurance
Administration; 806 KAR 2:090 to 806 KAR 2:100
Assets, liabilities; 806 KAR 6:060 to 806 KAR 6:080
Contracts, life, annuity; 806 KAR 15:030; 806 KAR 15:010
Motor vehicle reparations (no-fault); 806 KAR 39:070
Prepaid dental plan organizations; 806 KAR 43:010
Trade practices, frauds; 806 KAR 12:090; 806 KAR 12:100
Mines, Minerals
Explosives, blasting; 805 KAR 4:087 to 805 KAR 4:110
Oil, gas; 805 KAR 1:110
Public Service Commission; 807 KAR 5:006 to 807 KAR 5:011
Racing
Harness; 811 KAR Chapter 1
Thoroughbred; 810 KAR Chapter 1

PUBLIC SERVICE COMMISSION
General rules; 807 KAR 5:006
Tariffs; 807 KAR 5:011

PUPIL PERSONNEL SERVICES
Food Service Programs
Competitive foods rule; 703 KAR 1:090
Terms, Attendance, Operation
Attendance; 703 KAR 2:050
Terms, months; 703 KAR 2:010

PURCHASING
Model Procurement Code
Small purchase procedures; 200 KAR 5:308

RACING
Harness
Licensing; 811 KAR 1:070
Officials; 811 KAR 1:150
Review, appeal; 811 KAR 1:105
Stimulants, drugs; 811 KAR 1:090
Track deductions from wagers; 811 KAR 1:195
Thoroughbred
Jockeys, apprentices; 810 KAR 1:009

RECLAMATION
Bonds, Insurance; Requirements
Cancellation of surety bonds; 405 KAR 10:035 and E
General Provisions
Applicability; 405 KAR 7:030
Definitions, abbreviations; 405 KAR 7:020
Reference material; 405 KAR 7:015E
Oil Shale
Reference material; 405 KAR 30:015E
Strip Mining
Reference material; 405 KAR 1:015E
Surface Mining, Standards
Contemporaneous reclamation; 405 KAR 16:020 and E
Underground Mining, Surface Effects
Reference material; 405 KAR 3:015E

RETIREMENT
KERS
Contributions, interest rates; 105 KAR 1:010
Payment options; 105 KAR 1:080 and E

SOCIAL INSURANCE
Food Stamp Program
Certification process; 904 KAR 3:035
Eligibility requirements; 904 KAR 3:020
Reference material; 904 KAR 3:090 and E

SOCIAL INSURANCE (cont'd)
Medical Assistance
Drug payment; 904 KAR 1:020 and E
Hearing service payment; 904 KAR 1:039
Hospital inpatient services; 904 KAR 1:013
Medical transportation payments; 904 KAR 1:061
Medically needy; 904 KAR 1:004 and E
Mental health center; 904 KAR 1:045
Primary care; 904 KAR 1:055 and E
Reference material; 904 KAR 1:250 and E
Skilled nursing, intermediate care; 904 KAR 1:036 and E
Technical eligibility requirements; 904 KAR 1:011
Public Assistance
AFDC; need, amount; 904 KAR 2:016
AFDC; reference material; 904 KAR 2:150E
AFDC; technical requirements; 904 KAR 2:006
Aged, blind, disabled; 904 KAR 2:015
Child support program; 904 KAR 2:020; 904 KAR 2:170E
Collections; 904 KAR 2:200 and E
Disability determinations; 904 KAR 2:160 and E
Hearings, appeals; 904 KAR 2:055
Home energy assistance; 904 KAR 2:115E; 904 KAR 2:116; 904 KAR 2:180 and E
Payments; 904 KAR 2:050
Reference material; 904 KAR 2:150 to 904 KAR 2:190
Refugee assistance; 904 KAR 2:190E
Supplementary policies; 904 KAR 2:140 and E

SOCIAL SERVICES
Aging Services
Allocation formula; 905 KAR 8:040E
Audit guide; 905 KAR 8:010E
Contractors; 905 KAR 8:050E
Financial management, nutrition guide; 905 KAR 8:080E
Homecare allocation formula; 905 KAR 8:130E
Homecare fee schedule; 905 KAR 8:110E
Homecare policy manual; 905 KAR 8:120 and E
Homecare standards; 905 KAR 8:020
Meal standards; 905 KAR 8:030E
Ombudsman policy, procedure; 905 KAR 8:070
State plan; 905 KAR 8:060 and E
Child Welfare
Baby Doe; 905 KAR 1:150E
Child abuse self-help; 905 KAR 1:170
Policy, procedures manual; 905 KAR 1:180 and E
Children's Residential Services
Continuum of care; 905 KAR 7:040E
Day treatment, procedural manual; 905 KAR 7:020 and E
Facilities capacity; 905 KAR 7:060E
Facilities manual, residential; 905 KAR 7:030E
Facilities manual, treatment; 905 KAR 7:080 and E
Group home, procedural manual; 905 KAR 7:050
Patient charges; 905 KAR 7:090
Policy manual; 905 KAR 7:010E
Resident liaison responsibilities; 905 KAR 7:100
Staff training; 905 KAR 7:070E
Community Action Agencies
CSBG audit guide; 905 KAR 6:030 and E
CSBG program plan; 905 KAR 6:020E
Spouse Abuse, Crisis Centers
Matching formula, general funds; 905 KAR 5:030
Standards; 905 KAR 5:010

SOCIAL WORKERS
License; renewal, fee; 201 KAR 23:030

SOLAR ENERGY
Tax credit; 115 KAR 2:020

SOLID WASTE
(See WASTE MANAGEMENT)

TOLL FACILITIES
Appearance requirements; 600 KAR 2:040

TOURISM
Fish, Wildlife
Fish; 301 KAR 1:075 to 301 KAR 1:140
Game; 301 KAR 2:044 to 301 KAR 2:200

TRANSPORTATION
Administration
Disciplinary actions; 600 KAR 1:040
Employee conduct, time; 600 KAR 1:050
Motor pool; 600 KAR 1:070
Public hearings; 600 KAR 1:030
Safety hard hats; 600 KAR 1:060
Aeronautics
Airport development; 602 KAR Chapter 15
Highways
Maintenance; 603 KAR Chapter 3
Mass transportation; 603 KAR Chapter 7
Traffic; 603 KAR Chapter 5
Motor Vehicle Commission; 605 KAR Chapter 1
Toll Facilities; 600 KAR Chapter 2
Vehicle Regulation
Coal transportation; 601 KAR Chapter 35
Driver improvement; 601 KAR Chapter 13
Motor carriers; 601 KAR Chapter 1
Motor vehicle tax; 601 KAR Chapter 9

UTILITIES
(See PUBLIC SERVICE COMMISSION)

VEHICLE REGULATION
Coal Transportation
Extended weights; 601 KAR 35:050 and E
Forms; 601 KAR 35:010 and E
General tax provisions; 601 KAR 35:040 and E
Plan, agreements; 601 KAR 35:020 and E
Driver Improvement
Accident prevention course; 601 KAR 13:040 and E
Alcohol education, treatment; 601 KAR 13:050 and E
Motor Carriers
Highway motor fuel surtax, exemptions; 601 KAR 1:030 and E
Special permits; 601 KAR 1:015 and E
Motor Vehicle Tax
Handicapped license plates; 601 KAR 9:011 and E
Highway use license, taxes, records; 601 KAR 9:074 and E
National Guard plates; 601 KAR 9:015 and E

VITAL STATISTICS
Certificates, fees; 901 KAR 5:050

VOCATIONAL EDUCATION
Adult Education
Completion certificate; 705 KAR 4:205
General standards; 705 KAR 4:010
Instructional Programs
Admission standards; 705 KAR 7:070

VOCATIONAL REHABILITATION
Administration
Three-year plan; 706 KAR 1:010

WASTE MANAGEMENT
General Administrative Procedures
Definitions; 401 KAR 30:010
Reference documents; 401 KAR 30:070 and E
Hazardous Waste, Generator Standards
Manifest; 401 KAR 32:020; 401 KAR 32:100
Special conditions; 401 KAR 32:050

WASTE MANAGEMENT (cont'd)
Hazardous Waste, Identification, Listing
Basis for listing; 401 KAR 31:160
Constituents; 401 KAR 31:170
Lists; 401 KAR 31:040
Solid Waste Planning
Area plan, submission; 401 KAR 49:010
Assistance program; 401 KAR 49:040
Designation; 401 KAR 49:030
General provisions; 401 KAR 49:010

WATER
Sanitary Engineering
Reference material; 401 KAR 6:200 and E
Water Resources
Reference material; 401 KAR 4:200 and E
Water Quality
Application, KPDES; 401 KAR 5:060
Classification; 401 KAR 5:026
Definitions, general provisions, KPDES; 401 KAR 5:050
Permit conditions, KPDES; 401 KAR 5:065
Permit provisions, KPDES; 401 KAR 5:070
Reference material; 401 KAR 5:200 and E
Scope, applicability, KPDES; 401 KAR 5:055