Administrative Register of Kentucky

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

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is April 8 and 9, 1985. For information, call 502-564-8100, ext. 535.

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

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PUBLIC HEARINGS

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 (20) nor more than thirty (30) 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 (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

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

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

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

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY

The Department of Highways has received numerous requests and applications for additional access points and revisions in the type of access control on the state highway system. The granting or denying of these requests and applications affect not only the involved property owners but also the state's economic development and the safety of the traveling public. This emergency regulation will enable the Department of Highways to render a decision regarding such requests and applications utilizing a procedure directed toward protecting the public interest in economic development and also the interest of the affected property owners while prime consideration is given to the safety of the traveling public. It is necessary that this regulation take effect immediately so that no further delay be encountered in the processing of said requests and applications which could be detrimental to the public interest and the safety of the travelers upon the state highway system. This emergency regulation will be replaced by an ordinary administrative regulation promulgated in accordance with KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
FLOYD G. POORE, Secretary

TRANSPORTATION CABINET
Department of Highways

603 KAR 5:120E. Access control of highways.

RELATES TO: KRS 175.450, 176.050, 177.106, 177.230, 177. 240, 177.410, 177.440
PURSUANT TO: KRS 174.080, 176.050, 177.230, 177.240, 177.410
EFFECTIVE: February 26, 1985
REPLACED: March 12, 1985
NECESSITY AND FUNCTION: The need exists to define, design, construct, and maintain highways whereby the access (ingress and egress) is controlled. This regulation sets forth procedures to designate and/or modify the type of control to be utilized.

Section 1. Definitions. In this regulation where sections deal with "requirements," the words "shall," "should," and "may" are used to describe the degree of implementation of the requirements. To clarify the meanings intended, the following definitions apply:
(1) Shall - A mandatory condition. Where certain requirements are described with the "shall" stipulation, it is mandatory.
(2) Should - An advisory condition. Where the word "should" is used, it is considered to be advisable usage, recommended but not mandatory.
(3) May - A permissive condition. The requirement is optional.
(4) Urban - Areas of residential, commercial or industrial developments of sufficient concentration that they constitute or are characteristic of a city which necessitates, for

safety reasons, reduced highway speed limits to forty-five (45) MPH or less, excluding interstate systems.

(5) Rural - All areas other than urban.

(6) "Department's plans" as used herein means the Department of Highways' current plans which are based upon plans made at the time of contract letting together with any subsequent changes in access control made in conformance with applicable laws and regulations.

(7) "Access control" as used herein shall be one (1) of two (2) types; namely, "by permit" or "limited."

(a) "By permit" refers to all highways designated as access by permit on the department's plans.

(b) "Limited access" refers to all highways designated as such on the department's plans and shall be of the following two (2) types:

1. A fully controlled access highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no highway grade crossings or intersections. The termini for control of access shall be as shown on the department's plans.

2. A partially controlled access highway which gives preference to through traffic. However, access to selected public roads and streets may be provided and there may be some highway at grade intersections and private driveway connections as shown on the department's plans. The termini for control of access shall be as shown on the department's plans.

Section 2. One (1) of the three (3) appropriate boxes with applicable notes inserted, shown below, shall be placed on the title sheet and summary sheet of the plans for all state and federal-aid projects.

THIS PROJECT IS A FULLY CONTROLLED ACCESS HIGHWAY

THE CONTROL OF ACCESS ON THIS PROJECT SHALL BE BY PERMIT

THIS PROJECT IS A PARTIALLY CONTROLLED ACCESS HIGHWAY. ACCESS SHALL BE ALLOWED ONLY WHERE SPECIFICALLY SHOWN ON PLANS

Section 3. Access: Additions and Alterations. (1) On all highways where access control is by permit, the department shall establish such criteria for modifying existing access and/or allowing additional access points that will consider the safety and the interest of the highway users. Permits may be issued by the department for additional access provided they are in conformance with the established department criteria.

(2) On all highways where access is "fully controlled," additional accesses shall be granted only by constructing new interchanges, with grade separations where applicable, and design of these new interchanges shall be in conformance with the department's current design standards.

(3) On all highways where access is "partially controlled," the department may permit relocation or shifting of existing access points, addition of new access points, elimination of existing access points, or modification of access control under the following circumstances:

(a) An access point may be relocated or shifted by mutual consent of the property owner and the department. The access shall remain on the same side of the highway, cannot go beyond another existing entrance and shall meet minimum spacing within the department's current design standards and shall be an improvement based on standard engineering practices and safety criteria.

(b) Additional access points may be permitted under the following circumstances after a permit request is processed as hereinafter set forth in Section 4 of this regulation in accordance with the procedures set forth in Section 5 of this regulation:

1. The original design and/or subsequent revisions represent overly restrictive control in light of current state design criteria for access points on partially controlled access highways; and

2. The centerline of the requested access shall not be closer than 1,200 feet to the centerline of the nearest existing point of access in rural areas; or the centerline of the requested access shall not be closer than 600 feet to the centerline of the nearest existing point of access in urban areas; and

3. The property to be affected is not served by a frontage road or other public way.

(4) When a previous decision specifying access control is no longer necessary, as determined by the department, the department may change the access control designation to the extent justified in accordance with procedures outlined in Section 5 of this regulation.

Section 4. Processing Requests for Changes in Access Control by Permit Applicants. (1) All permit requests involving access shall be filed with the department's district office for the county in which the requested access point is located.

(2) Permit requests affecting highways where access control is by permit may be approved at the district level or submitted to higher authority in accordance with procedures determined by the department.

(3) Permit requests recommended by the district for approval for new access on highways where access control is either full or partial shall be forwarded to the State Highway Engineer. The State Highway Engineer shall review the request and obtain the recommendations of the Directors of the Divisions of Maintenance, Traffic, Construction, Right-of-Way and Design of the department in addition to the Federal Highway Administration and Turnpike Engineer Consultant when applicable. The State Highway Engineer shall submit his recommendation, together with the various recommendations received by him, to the Commissioner of Highways.

(4) When the State Highway Engineer recommends approval of a permit request where access control is full or partial, the Commissioner of Highways shall arrange for a public hearing to

be conducted. After reviewing the results of the hearing, the Commissioner of Highways shall make the final decision and advise the State Highway Engineer to implement the decision. The department shall then notify the requesting party of the final decision on the request and, when approval is given, require the requesting party to furnish any additional documents, plans, studies, compensation and other requisites as determined by the department prior to issuing a permit for the construction of the additional access. Also, prior to issuance of the permit, the owner of the property shall compensate the Department of Highways for any increase in value to the affected property attributable to the new access based on before and after value appraisals by the Department of Highways. The property owner shall also reimburse the department for administrative expenses such as expenses incurred in processing the permit, reviews, hearing and appraisals. The cost of construction and maintenance of the new access shall be borne by the property owner(s).

Section 5. Procedures for Changing the Type of Access Control on an Existing Highway Facility. (1) All requests for changing the type of access control on an existing roadway shall be forwarded to the State Highway Engineer.

(2) Access restrictions may be reduced to a level capable of meeting traffic control needs when no significant detriment to highway safety will occur under the following circumstances:

(a) The existing roadway has been replaced by a parallel route which takes traffic away from the existing roadway and the function of the highway has been officially reduced; namely, arterial to collector; or

(b) An analysis of the original traffic projections are made and it is determined that the entire corridor has been constructed and potential land use developments have been accomplished.

(3) More restrictive control of access may be established when necessary to meet highway safety requirements and traffic control needs.

(4) The State Highway Engineer shall review the request and obtain the recommendations of the Directors of the Divisions of Maintenance, Traffic, Construction, Right-of-Way and Design of the department in addition to the Federal Highway Administration and Turnpike Engineer Consultant when applicable. The State Highway Engineer shall submit his recommendation, together with the various recommendations received by him, to the Commissioner of Highways who will arrange for a public hearing to be conducted. After reviewing the results of the hearing, the Commissioner of Highways shall make the final decision and advise the State Highway Engineer to implement the decision.

(5) The department shall modify the plans and deeds when applicable.

(6) In situations where access control is changed, the department shall modify the plans indicating the type of new access control. When access control is reduced, compensation shall be made to the department to comply with Title 23, Code of Federal Regulations, Section 713.307.

(7) In situations where more restrictive access control is imposed, the department shall provide reasonable access or shall compensate the property owner(s) for loss of reasonable access.

(8) The Commissioner of Highways may make any exceptions to the procedures set forth in this section as are deemed necessary in order to comply with all applicable federal laws and regulations.

Section 6. Every deed of conveyance of property acquired by the department for purposes of right-of-way for any state or federal project shall, in addition to the official order number, show the designation of the type of access highway involved as defined in Section 1 of this regulation. If new access is allowed, the deed of conveyance shall be modified by filing a deed of correction at the expense of the property owner if deemed necessary by the department.

Section 7. The department shall maintain records for public inspection at its office in Frankfort, Kentucky, of all completed state and federal projects, together with the designation of the type of access to be allowed on the project as defined in Section 1 of this regulation.

Section 8. 603 KAR 5:010, Types of limited access; permits for other access, is hereby repealed.

STEPHEN REEDER, Commissioner
FLOYD G. POORE, Secretary
APPROVED BY AGENCY: January 7, 1985
FILED WITH LRC: February 26, 1985 at noon

STATEMENT OF EMERGENCY

Whereas, 1984 House Bill 493 mandates a continuing education and inservice training program for emergency medical technicians in lieu of the recertification examinations previously used, and whereas, 1984 House Bill 493 became effective on July 13, 1984, and whereas, emergency medical technicians are currently required to be attaining inservice training or continuing education training and this regulation is necessary to implement that program an emergency is declared and this regulation shall become effective upon its approval and signature by the Governor. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 13:050E. Training, examination and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
PURSUANT TO: KRS 13.082, 211.964
EFFECTIVE: March 1, 1985
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet [Department] for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to establish requirements for training; examinations, certifications; and renewal and recertification of Emergency Medical Technicians.

Section 1. EMT Training Course Requirements. The training course shall:

(1) Include the U.S. Department of Transportation curriculum and such additions to the curriculum as prescribed by the cabinet [department];

(2) Be at least ninety-nine (99) [eighty-seven (87)] hours in duration;

(3) Not be started until all equipment, texts, television tapes, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(4) Not share equipment between courses unless such equipment is housed in the same building and is available equally to all EMT classes;

(5) Utilize equipment, texts, television tapes and other materials approved by the cabinet [department];

(6) Be taught by an EMT instructor certified by the Cabinet [Department] for Human Resources;

(7) Have at least one (1) EMT instructor-trainee; or one (1) additional EMT instructor;

(8) Have a class certification number assigned by the cabinet [department];

(9) Be limited to thirty (30) students; and

(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT training course.

Section 2. EMT Certification Examination. The cabinet [department] shall prescribe the format and content of the EMT's certification examinations which shall consist of two (2) parts:

(1) Written. The written examination shall be in four (4) parts. An overall passing grade of seventy-five (75) percent, shall be required. In the event an applicant's overall average is less than seventy-five (75) percent, but is seventy (70) percent or more, the applicant may, upon proper application, re-take the part in which he made the lowest score. However, should the applicant again fail, he shall be required to re-take the entire EMT training course before being eligible for re-examination.

(2) Practical. The applicant shall successfully pass all parts of the final practical examination. In the event he fails to successfully pass all portions of the final practical examination, he shall be permitted one (1) opportunity to re-take the part which he failed to pass. However, should the applicant again fail to pass the particular part of the examination, he shall be required to re-take the entire EMT training course before being eligible for re-examination.

Section 3. Certification of EMTs and EMT-A. The cabinet [department] shall certify EMTs based upon the type of service to be rendered. An EMT engaged in ambulance service shall be issued certification as an "Emergency Medical Technician-Ambulance (EMT-A)."

Section 4. Expiration of Certification. All EMT certificates shall expire two (2) years from the date of issuance.

Section 5. Renewal of Certification; Inservice Training or Continuing Education Requirements. In order to renew a certificate, the emergency medical technician shall, during his period of certification, attain at least sixteen (16) hours of inservice training or continuing education, or a combination thereof, and show evidence of certification in cardiopulmonary resuscitation as required by the American Heart Association or the American National Red Cross [successfully pass a written and practical renewal examination, prescribed by the department. Renewal examinations shall be subject to the same conditions as the original certification examinations].

(1) Subject matter requirements for EMT inservice training or continuing education.

(a) To receive credit for inservice training or continuing education, the applicant for recertification may take inservice training or continuing education on any subject covered by the United States Department of Transportation Emergency Medical Technician curriculum, 3rd edition, or any subject for which instruction is authorized by the Cabinet for Human Resources for the Emergency Medical Technician Program in Kentucky.

(b) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different areas of emergency medical technician course subject matter instruction or skills instruction, in addition to cardiopulmonary resuscitation.

(c) The following are not eligible for credit as inservice training or continuing education:

1. Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

2. Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

(d) Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.

(e) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.

(f) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(g) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for inservice training or continuing education credit if it meets the criteria of paragraph (a) of this subsection.

(2) Instructors for EMT inservice training and continuing education. The following persons are considered as qualified to conduct inservice training and continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311.

(b) A registered nurse licensed pursuant to KRS Chapter 314.

(c) A paramedic certified by the State Board of Medical Licensure.

(d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources.

(e) An instructor certified by a state or federal agency who is teaching within the area

authorized by his certification a course which will qualify for emergency medical technician inservice training or continuing education.

(f) Physicians, registered nurses, paramedics or emergency medical technician instructors currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of paragraphs (a) through (e) of this subsection, as applicable.

(3) Cardiopulmonary resuscitation requirement. During the second year of the certification period the EMT shall obtain or renew certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted by the American Heart Association or the American National Red Cross or under its authority by an instructor certified by the American Heart Association or the American National Red Cross.

(b) The course shall be taught for record and shall be certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization.

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children;

7. Mouth to mouth/mouth to nose resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (3) of this section.

(e) The applicant for renewal of certification shall forward to the Cabinet for Human Resources a copy of both sides of the certificate issued to him indicating successful completion of the CPR course.

(4) Inservice training and continuing education requirements for emergency medical technician instructors and instructor trainers.

(a) An emergency medical technician instructor or instructor trainer shall meet the inservice training or continuing education requirements for recertification in the following manner:

1. Conduct an emergency medical technician course; or

2. Teach one (1) or more lessons of an emergency medical technician course; or

3. Teach one (1) or more lessons of an inservice training or continuing education course; or

4. Conduct a final practical examination or challenge examination for an emergency medical technician course; and

(b) If paragraph (a)2 through 4 of this subsection are claimed for recertification, the total number of hours spent in instruction or examinations shall not be less that sixteen (16) hours. Any combination of hours totalling sixteen (16) may be used; and

(c) An emergency medical technician instructor trainer may utilize time spent in conducting an emergency medical technician instructor course or evaluation in lieu of time required in paragraph (a) of this subsection; and

(d) An emergency medical technician instructor or instructor trainer shall attend either the annual emergency medical technician instructor conference or the annual training session for newly appointed instructors. Time spent at such conferences may be used as credit toward the time required in paragraph (a) or (b) of this subsection; and

(e) Additionally, each emergency medical technician instructor or instructor trainer shall meet the cardiopulmonary resuscitation requirement or shall teach a cardiopulmonary resuscitation course for record or shall teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 6. Temporary Extension of Certificate. Upon a showing of undue hardship in obtaining [retaking] the required inservice training or continuing education [examinations] for renewal, the cabinet [department] may extend a certificate for an additional six (6) months.

Section 7. Emergency Medical Technicians Certified in Other States and U.S. Military corpsmen. Upon proper application, and upon payment of the prescribed fee, the following may take the Kentucky "Challenge Examination," consisting of both written and practical parts, for certification as an EMT:

(1) U.S. Military Corpsmen, within a period of one (1) year from the date of discharge, who have either a:

(a) U.S. Army MOS 91B or 91C; or

(b) Its equivalent for other services.

(2) Emergency medical technicians, currently certified in other states.

C. HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: February 6, 1985
FILED WITH LRC: March 1, 1985 at 8 a.m.

AS AMENDED

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
As Amended

201 KAR 11:180. Promotion of out-of-state property, registration and prerequisites.

RELATES TO: KRS 324.142
PURSUANT TO: KRS Chapter 13A
EFFECTIVE: March 12, 1985
NECESSITY AND FUNCTION: To set forth procedure and content of registration required for promotional activities of out-of-state property and time-shares.

Section 1. Definitions. (1) Time-share: arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. For the purpose of this regulation, a time share may be:
(a) A time-share estate, wherein a freehold estate or an estate for years is conveyed;
(b) A vacation lease, wherein a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;
(c) A vacation license or club membership, wherein a buyer acquires the right to occupy an undesignated unit at certain real property(ies) during a specific time each year for a specific number of years;
(d) Variations of the above that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.
(2) Promotional activities - every solicitation or attempt to bring about the sale, exchange, lease, assignment, license or award with regard to an interest in real estate.

Section 2. To obtain commission approval for engaging in promotional activities in the Commonwealth for property located outside of the Commonwealth, each applicant must file with the commission the documents set forth below:
(1) Registration form [provided by the commission] setting forth pertinent date pertaining to: legal description of property, name(s) of developers, owners and persons involved in promotional activities, type of offering, form of ownership of property, encumbrance(s) on property, current and anticipated improvements, taxes and assessments, facilities and services offered or to be offered in the future, and description of promotional activities to be conducted in Kentucky.
(2) If a corporation, submit a copy of the Articles of Incorporation with all amendments thereto and a current list of the names and addresses of officers and directors with their principal occupation at the current time; out-of-state corporations must also submit "certificate of authority" issued by the office of the Secretary of State of the Commonwealth of Kentucky.
(3) If a partnership or association, submit a copy of Articles of Partnership or other organizational documents.
(4) Consent to service of process, on form provided by the commission.
(5) Copies of all sales contracts, agreements, option forms, lease forms, and the prospectus currently used for the property.
(6) Consent forms [provided by the commission] for commission to inspect the real estate being promoted and to inspect and copy books and reports of the owner and/or developer at the cost of the applicant, on forms provided by commission.

Section 3. Exemptions: The registration required under this regulation shall not apply to:
(1) The making of any offer or disposition of any out-of-state property;
(a) By an owner in a single or isolated transaction; or
(b) By any government or government agency; or
(c) By court order.
(2) Any applicant that has been granted an exemption by the Kentucky Real Estate Commission on the ground that their promotional activities involve property of a small amount or of such a limited character that the public interest and protection of purchasers is deemed unnecessary with regard to said offerings.
(3) Any applicant who has registered under the Federal Interstate Land Sales Full Disclosure Act shall be exempt from the registration requirements contained in paragraphs 2a-c [d] of this subsection, upon the filing with the commission of a copy of an effective statement of record filed with the Secretary of Housing and Urban Development together with a filing fee of $100.

Section 4. [In addition to the registration requirements set forth above,] sellers of time-share plans in Kentucky regardless of location of property must verify, on a form provided by the commission.
(1) That each purchaser shall receive a fully completed copy of any contracts pertaining to the sale which includes the date of execution of contract, financial obligations of purchaser (including initial purchase price and any additional charges to which purchaser may be subject), estimated date of availability of accommodation or facility which is not completed at time of contract, and a description of the nature and duration of the time-share being sold.
(2) That each purchaser shall be informed orally at the time he or she signs a contract of the purchaser's right to recision, which shall be substantially similar to that set forth in subsection (3) of this section.
(3) That all sales contracts utilized in the promotion and sale of said time-share plans shall include in underlined, bold face type of a minimum size of ten (10) points substantially the following statement: "You may cancel this contract without any penalty or obligation within three (3) business days from the above date. If you cancel, any payments made by you under the contract and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security

interest arising out of the transaction will be cancelled. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to:
Name of seller at _____
Address of seller _____
NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

(4) That if no interest in real property is being conveyed, contracts shall also contain the following statements in underlined, bold face type of a minimum size of ten (10) points: "You may also cancel this contract at any time after the accommodations or facilities are no longer available as provided in this contract."

Section 5. (1) Violation of any of the requirements of this regulation or failure to comply with the provision of the notice of cancellation by a licensee shall constitute a violation of KRS 324.160(1)(q) of this regulation.

(2) Violation of any of the requirements of this regulation or failure to comply with the provision of the notice of cancellation by an owner/developer shall result in revocation of approval, as required under KRS 324.142, and may be enforced by injunctive action under KRS 324.020(5).

Section 6. A filing fee of $100 shall accompany all applications.

JAMES H. HUFF, Acting Chairman
APPROVED BY AGENCY: January 7, 1985
FILED WITH LRC: January 7, 1985 at 3 p.m.

TRANSPORTATION CABINET
Department of Highways
As Amended

603 KAR 5:061. Intrastate toll bridges and toll ferries.

RELATES TO: KRS 280.010 to 280.130
PURSUANT TO: KRS 280.080
EFFECTIVE: March 12, 1985
NECESSITY AND FUNCTION: KRS 280.080 requires the Department of Highways to make such regulations for the control of toll bridges or toll ferries, as defined in KRS 280.010, as the department deems necessary.

Section 1. Application for Certificate of Convenience and Necessity. (1) Any bridge company or ferry company, except any which can prove to the department that it holds a perpetual and irrevocable franchise for such operation, who seeks to operate a toll bridge or toll ferry connected to the state primary road system shall make application at the highway district office of the highway district in which the toll bridge or toll ferry is located for the certificate of convenience and necessity required by KRS 280.020. Application forms are available in all highway district offices and from the Transportation Cabinet, Division of Traffic, Frankfort, Kentucky 40622.

(2) The application form must be completed in its entirety and contain at a minimum, the information required by KRS 280.030.

(3) Upon receipt of the application, the department shall fix a date for hearing the application and shall immediately notify the applicant of the date, time and location of the hearing.

(4) The applicant shall present proof as to the applicant's general ability, experience, organization and equipment. The applicant shall, at the hearing, submit any additional proof that the public convenience and necessity require the applicant's toll bridge or toll ferry operation.

(5) Department representatives may inspect the applicant's equipment prior to the issuance of a certificate of public convenience and necessity.

(6) The department shall issue a decision on any application within thirty (30) days of the hearing.

(7) The applicant may appeal the decision of the department in accordance with KRS 280.110.

Section 2. Annual Report. On forms furnished by the department, every toll bridge and toll ferry company <u>which does not hold a perpetual and irrevocable franchise</u> shall submit an annual report of the previous year's operation on or before March 1 of each year to the chief district engineer of the highway district in which the toll bridge or toll ferry is located. The company president, secretary, treasurer, superintendent or manager shall under oath make and sign a statement on the annual report that the information contained in the annual report is correct. The report shall include the information required in KRS 280.030 and also the following:

(1) The number, by class, of vehicles accommodated during the report year and the toll schedule for each class of vehicle;

(2) For toll ferries, a description of the barges and power units in use during the year;

(3) The schedule of hours of service and trips made; and

(4) Any additional relevant information required by the department.

Section 3. Toll Rates. (1) No change in toll rates charged may be made by a toll bridge or toll ferry company <u>including one which holds a perpetual and irrevocable franchise</u> without the approval of the department.

(2) To request a change in toll rates, the company must apply, in writing, to the department's chief district engineer of the highway district in which the toll bridge or toll ferry is located. The request shall include the reasons for the requested change and the toll bridge or toll ferry company shall make available to the department's all financial reports of the company.

(3) The company shall give notice to the public of the filing of the rate change request by publication of the proposed rate schedule and information for filing a formal protest of the proposed rate change with the department in accordance with the requirements of KRS Chapter 424.

(4) If a formal protest is filed within two (2) weeks of the final publication of the notice or the department has reservations about the proposed rate increase, the department's chief district engineer shall fix a date between thirty (30) and forty-five (45) days of final publication of the notice for hearing the application for a toll rate change.

(5) The department shall give notice of the hearing by means of publication of a notice in accordance with the requirements of KRS Chapter 424.

(6) The department shall issue a decision on any request for a toll rate change within thirty (30) days of the hearing or within thirty (30) days of final publication of the notice.

(7) The company may appeal the decision of the department in accordance with KRS 280.110.

Section 4. Operation of a Toll Ferry or Toll Bridge. (1) A copy of the irrevocable franchise or the certificate of public convenience and necessity shall be posted on all ferry boats and in the toll booths of all bridges affected by this administrative regulation.

(2) A toll bridge or toll ferry company holding a certificate of public convenience and necessity shall not operate over any bridge or stream other than those specified in the certificate.

(3) Hours of operation, toll rates, services to be performed, and the safety of operation as set forth by the department in the certificate of public convenience and necessity shall be strictly complied with by all certificate holders.

(4) If a toll bridge or toll ferry company **including one holding a perpetual and irrevocable franchise** is found, during an inspection, to be in non-compliance with any regulation, statute or order, it shall have ten (10) days, following the inspection to correct the non-compliance. If at the end of the ten (10) days the company is still in non-compliance the department shall fix a hearing date on the non-compliance. The hearing date will be upon ten (10) days written notice to the toll bridge or toll ferry company.

(5) The department's determination shall be issued within thirty (30) days of the hearing.

Section 5. Safety Devices. (1) Safety devices as required by KRS 280.120 and 280.130 shall be provided and properly maintained by each toll ferry company. In addition, the department may require any toll bridge or toll ferry company **including any holding a perpetual and irrevocable franchise** to place and maintain other traffic control devices such as, but not limited to, signs, signals, lighting, pavement markings, and barricades that may be necessary for the safety of the motoring public. All such devices required shall conform to the specifications set forth in 603 KAR 5:050.

(2) Each toll ferry company shall provide and maintain in reasonable condition the number of life preservers or floats, fire extinguishers, axes, and yawls or life boats as required by the U.S. Coast Guard in their regulations governing the operation of ferries.

Section 6. The administrative regulation of the department as herein outlined is intended to supplement the specific requirements contained in KRS Chapter 280 and regulations of appropriate agencies of the federal government. In all cases where the department's regulations conflict with the regulations of such agencies, or where the regulations of other governing agencies are more stringent than those of the department, the regulations of the other agency shall prevail.

Section 7. 603 KAR 5:060, Intrastate toll ferries and bridges, is hereby repealed.

STEPHEN REEDER, Commissioner
APPROVED BY AGENCY: January 15, 1985
FILED WITH LRC: January 15, 1985 at 11 a.m.

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

903 KAR 5:280. Appeals from notices of income tax refund intercept.

RELATES TO: KRS 131.570(1), 341.440, 341.450(2)
PURSUANT TO: KRS 13A.100, 194.050, 341.115
EFFECTIVE: March 12, 1985
NECESSITY AND FUNCTION: This regulation sets up the appeals process and general rules for the conduct of hearings regarding the intercept of individual income tax refunds in full or partial satisfaction of outstanding benefit overpayments.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee:

(a) **The department shall provide notice of income tax refund intercept to a debtor as required by KRS 131.570.** Any debtor wishing to appeal to a referee from a notice of income tax refund intercept issued by the Revenue Cabinet may do so by filing with the Division of Unemployment Insurance or its authorized representative within thirty (30) days of the date of the notice a written statement clearly indicating the party's desire to have a hearing.

(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 parities 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 judgement require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties.

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 debtor 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 opportunity 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 debtor can attend without undue expense or inconvenience, giving consideration to the debtor's place of residence.

(d) The hearing may be conducted via teleconference if the residence of the debtor is 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 reason therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the notice of income tax refund intercept.

(b) Copies of the decision shall be mailed to the debtor 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 division's 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.

Section 2. Appeals to the Commission. (1) Presentation of an appeal to the commission:

(a) Any debtor 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 commission 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. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal. Written argument shall be considered filed when delivered to a representative of the commission, or deposited in the mail, as indicated by the postmark thereon.

(b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place such evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of such additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.

(3) The hearing of appeals by the commission on cases ordered removed to it from any referee: The procedure on any case before a referee, ordered by the commission to be removed to it, shall be presented, heard and decided by the entire commission in the manner as prescribed for the hearing of other cases before the referee.

(4) The determination of appeals before the commission:

(a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(5) Reconsideration:

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the

mailing date of such decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is delivered to an authorized representative of the commission or division, or deposited in the mail as indicated by the postmark thereon. The commission shall respond to such requests for reconsideration by mail, within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of the time for appeal to the circuit court, if such application is denied.

Section 3. General Rules for Both Appeal Stages. (1) Issuance of subpoenas: Subpoenas requested 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 debtor or personnel or representatives 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 appeal shall be considered and passed upon. However, those issues shall be limited to: the amount of the debt owed; whether or not the debt is final due and owing; and the existence of any encumbrance concerning the method of debt collection.

(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, KY 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: January 9, 1985
FILED WITH LRC: January 15, 1985 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 224.033(17)
NECESSITY AND FUNCTION: This regulation applies the use classifications found in Sections 4, 5, 6, and 7 [and 8] 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 2 [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 5 [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 pursuant to 401 KAR 5:031, Section 8 [9]. Outstanding resource waters may have unique water quality characteristics which shall be maintained by

additional criteria adopted pursuant to 401 KAR 5:031, Section 7 [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 ursuant 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 shall reclassify the water body 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 economic and social impact.

(5) 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 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 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 be required to support the reclassifications of surface waters of the Commonwealth as follows:

(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.

(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) 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. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota must be documented.

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

(9) [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 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 will be assigned. Procedures for reclassification 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 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.

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.

(3) Exceptions to specific criteria listed to protect use classifications in 401 KAR 5:031 are shown in the tables of stream use classifications in this section. All other criteria in 401 KAR 5:031 applicable to the listed use classifications also apply to these streams.

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

(See tables following regulatory impact analysis)

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 15, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald J. Challman

(1) Type and number of entities affected: Generally the entities affected by this regulation irrespective of the proposed changes include: (1) entities required to treat wastewater (the regulated public); (2) fishing and recreational enthusiasts; and (3) the general public. A more detailed description of entities affected is contained in the regulatory impact analysis (RIA) prepared for 401 KAR 5:031, Water Quality Standards, which is a companion regulation of this one.

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

1. First year: In the short-run, no additional costs to the regulated community should result from this regulation. Savings to entities affected by the regulation are fairly significant and relate primarily to maintaining community water supplies, viable fishery resources, water-based recreational opportunities, and Kentucky's unique and exceptional Outstanding Resource Waters. See RIA prepared for the companion regulation 401 KAR 5:031 for further details.

2. Continuing costs or savings: Costs over the long-run will continue to escalate for the regulated community corresponding to economic development and additional waste inputs. The distinction being made here is that these are not new costs resulting from this regulation. Regulated entities are aware of these continuing and long-standing facility compliance requirements and are therefore anticipating cost

increaes.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined.

(b) Reporting and paperwork requirements: This regulation does not containa any reporting or paperwork requirements. The regulation specifies legitimate stream 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) enforcement process leading to 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 have internalized associated costs with normal budget appropriations. This regulation as it relates to the operation of the Cabinet does not change the basis for routine procedures involved in managing construction grants, permitting, compliance monitoring or enforcement.

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

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 establishes legitimate stream uses, providing the basis for permitting, compliance monitoring and enforcement actions where necessary.

(3) Assessment of anticipated effect on state and local revenues: Changes to this regulation will not by themselves have an effect on state and local revenues. Over the long-run, state and local government will have to increase expenditures associated with wastewater treatment corresponding to economic growth and development. Additional impacts of this and other companion regulations are discussed in the RIA prepared for 401 KAR 5:031.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were evaluated with the exception of the "no action" alternative. The "no action" alternative was rejected since the proposed changes are minor and were necessary to clarify existing requirements and practices of the state and regulated community.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: Persons reviewing this regulation are encouraged to review the RIA prepared for 401 KAR 5:031. Regulation 401 KAR 5:026, 401 KAR 5:029, and 401 KAR 5:031 are companion regulations. Regulation 401 KAR 5:026 establishes legitimate stream uses; 401 KAR 5:029 sets out general provisions for all wastewater dischargers; and 401 KAR 5:031 specifies numerical and narratiave criteria that must be maintained to protect legitimate stream uses. Each regulation is dependent on the others and the resulting impacts are similar, if not the same. Conclusions of the RIA for 401 KAR 5:031 are not repeated here in order to reduce the typing of the Cabinet and of those who prepare the Administrative Register.

Tiering:
Was tiering applied? No. Tiering was not applied since the regulation affects all entities required to treat wastewater irrespective of facility ownership, capacity, or unit process or treatment employed.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Classification 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
MEASURE'S PURPOSE: Specifies use classifications for warm and cold water aquatic habitat, drinking water (at points of withdrawal), recreation, and outstanding resource waters.
PROVISION/MECHANICS: Regulation specifies that warmwater aquatic habitat, coldwater aquatic habitat, primary contact recreation, secondary contact recreation, domestic drinking water (at points of withdrawal), and outstanding resource water use classification shall be applied (where applicable) to certain streams of Kentucky. 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 beneficial uses of the subject waters.
FISCAL EXPLANATION: 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. In the long-run, many of the basins cannot assimilate the wastes associated with growth and development without a corresponding increase in the size and sophistication of wastewater operations and processes. Treatment requirements over time may increase for new source applicants and expansions of existing facilities, mandating more expensive advance 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.
PREPARER: Donald J. Challman

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
		BIG SANDY BASIN		
Hood Creek	Source to Wheeler Branch	Lawrence	CAH, PCR, SCR	
		LITTLE SANDY RIVER BASIN		
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		
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	
		LICKING RIVER BASIN		
Caney 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		
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	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		
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	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR	
	GREEN RIVER BASIN			
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 148.0	Butler/Warren	WAH, PCR, SCR, ORW	
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 GreenRiver	Butler/Muhlen-burg	WAH, PCR, SCR	
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH, PCR, SCR	
Trammel Fork	Source to Hway 31E (River Mile 23.6)	Warren	CAH, PCR, SCR	
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR	
	LOWER CUMBERLAND RIVER BASIN			
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			
Tennessee River	River Mile 22.4 to River Mile 0.0	Livingston/ McCracken	WAH, PCR, SCR, DWS	
	TRADEWATER RIVER BASIN			
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	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
	OHIO RIVER BASIN (Main Stem and Minor Tributaries)			
Ohio River	Big Sandy River (River Mile 664.15) to Mississippi River	Ballard	WAH, PCR, SCR, DWS	[See next page]

[Exceptions to Specific Criteria for Ohio River Main Stem

1. Dissolved oxygen: concentrations shall average at least 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time provided that a minimum of 5.0 mg/l at any time is maintained during the April 15-June 15 spawning season.

2. Temperature: (a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	45
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

3. Total dissolved solids: Not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent 25°C specific conductance values are 800 and 1,200 micromhos/cm respectively.

4. Maximum allowable instream concentrations for specific parameters are given below. Metal concentrations are total recoverable values unless otherwise listed.

Parameter	Concentration (mg/l)
Chromium (hexavalent	0.05
Cyanide	0.025
Lead (dissolved)	0.05
Nitrite-Nitrate-N	10.00
Nitrite-N	1.0
Phenolic compounds	0.01

Copper: when total hardness as calcium carbonate is:	Allowable Concentration (mg/l) is:
50	0.012
80	0.018
100	0.022
160	0.034
200	0.043

Zinc: When total hardness as calcium carbonate is:	Allowable Concentration is:
0- 80	0.040
81-120	0.055
121-160	0.070
161-180	0.095
181-200	0.115

5. The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine and PCBs is prohibited.]

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
Doe Run Creek	Source to KY Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR	
Sinking Creek	Source to Kwy 259 (River Mile 4.0	Breckinridge	CAH, PCR, SCR	
	UPPER CUMBERLAND RIVER BASIN			
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 River Dam to Highway 90 bridge (River Mile 426.5	Russell/ Cumberland	CAH, PCR, SCR, DWS	
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, ORW	
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 Hway 987 (River Mile 27.4	Harlan	CAH, PCR, SCR, ORW	

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
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 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	

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

401 KAR 5:029. General provisions.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS [13.082,] 224.020, 224.033, 224.060
NECESSITY AND FUNCTION: This regulation contains a definition and abbreviation section applicable to all water quality regulations. A non-degradation section is included pursuant to KRS Chapter 224. A section pertaining to withdrawal of waters not meeting water quality standards and criteria is included to address withdrawal of contaminated waters. A sample collection and analytical methodology section is included to insure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included.

Section 1. Definitions and Abbreviations. (1) General function of definitions. The following definitions describe terms used in this chapter. Terms not defined below shall have the meaning given to them in relevant statutes or, if not defined in statutes, the meaning attributed by common use.

(a) "Aquifer" means any formation of soil, sand, rock, gravel, limestone, sandstone, or other material or any fracture, crevice, or void in any space formation from which underground water is or may be available.

(b) "Coldwater aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life including self-sustaining or reproducing trout populations on a year-round basis [as well as stocked trout].

(c) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(d) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water [, if not exceeded, are] expected to result in an aquatic ecosystem suitable for designated uses of waters. Such criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreational use.

(e) "Division" means the Division of Water [Quality].

(f) "Effluent ditch" means that portion of a treatment system which is a discreet, person-made conveyance, either totally owned, leased or under [proper] easement by the discharger, which transports a discharge to waters of the Commonwealth.

(g) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (thermocline) of a lake.

(h) "Eutrophication" means the enrichment of waters of the state by the discharge or addition of nutrients.

(i) "Fecal coliform" means the portion of the coliform group of bacteria which are [is] present in the intestinal tract [gut] or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at 44.5 degrees plus or minus 0.2 degrees C.

(j) "Hypolimnion" means the lower cold region

of a stratified body of water that extends from the metalimnion to the bottom of the lake and circulation is restricted while stratified with the upper waters thereby receiving no oxygen from the atmosphere.

(k) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water.

(l) "Intermittent stream" means a stream that flows at certain times of the year as when it receives water from springs or precipitation in the immediate watershed.

(m) "LC50" is used to express the results of bioassays having lethality as the criterion of toxicity. A numerical percentage is used to indicate the percentage of the test animals killed at a given concentration.

(n) "Low flow (seven (7) day, once-in-ten (10) year low flow)" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years **and is the governing flow criterion for water quality standards, except where stream flow is regulated, in which case the governing flow shall be the instantaneous minimum flow**.

[(o) "Low-flow stream" means that portion of a watercourse where the low flow (not attributable to discharges and other hydraulic alterations) is one (1) cubic foot per second or less.]

(o) [(p)] "Median tolerance limit (TLm)" is a measure of the concentration at which fifty (50) percent of the organisms survive.

(p) [(q)] "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.

(q) [(r)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(r) [(s)] "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin as opposed to climatic change or naturally occurring seasonally variable temperature associated with riparian vegetation and seasonal changes.

(s) [(t)] "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(t) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(u) "Non point" means any source of pollutants not defined by point source as used in this regulation.

(v) "Outstanding resource waters" means waters designated by the cabinet [department] pursuant to 401 KAR 5:031, Section 7 [8].

(w) "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, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(x) "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(y) "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(z) "Public water supply" means only surface water that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry and meets state and/or federal regulations under the Safe Drinking Water Act (P.L. 92-523) [for drinking water]. This term is synonymous with "domestic water supply."

(aa) "Standard" is a regulation [numerical value, range of values, or narrative statement] promulgated by the cabinet establishing the use or uses to be made of a waterbody or segment and the water quality criteria necessary to maintain and protect that use or uses [department to maintain and protect the waters of the Commonwealth for designated uses].

(bb) "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; [, except effluent ditches]; impounded waters; marshes and wetlands; and any subterranean waters flowing in well defined channels and having a clear hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(cc) "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs.

(dd) "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and interfere with the normal propagation of aquatic life, wildlife, or preclude the legitimate uses of any waters of the Commonwealth.

(ee) "Warmwater aquatic habitat" means any surface water and associated substrate capable of supporting indigenous warmwater aquatic life.

(2) Abbreviations used in water quality regulations:

(a) °C means degree(s) Celsius;

(b) EPA - See U. S. EPA;

(c) °F means degree(s) Fahrenheit;

(d) KPDES means Kentucky Pollutant Discharge Elimination System;

(e) [(d)] mg/l means milligrams per liter (same as ppm);

(f) [(e)] NPDES means National Pollutant Discharge Elimination System;

(g) [(f)] pCi/l means picocuries per liter;

(h) [(g)] ppm means part(s) per million (assuming unit density, same as mg/l);

(i) [(h)] ug/l means micrograms per liter;

(j) [(i)] U.S. EPA means the United States Environmental Protection Agency.

Section 2. Non-degradation. (1) It is the purpose of these regulations to safeguard the waters of the Commonwealth, for their designated

uses, to prevent the creation of any new pollution of the waters of the Commonwealth; and to abate any existing pollution.

(2) **Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.** The state water quality standards and continuing planning process designed to provide for the protection of existing water quality and/or the upgrading or enhancement of water quality in all waters of the Commonwealth shall serve as the method for implementation of this policy.

(3) The implementation of this policy shall conform to 40 CFR 131.12 [130.17] to the extent allowed by KRS 224.020.

(4) **Water quality shall be maintained and protected in waters designated as outstanding resource waters.** [No degradation shall be allowed in outstanding resource waters to the extent that:]

[(a) [The introduction of specific pollutants exceeds] The criteria established pursuant to Section 7 [8](2) of 401 KAR 5:031 is exceeded due to the introduction of specific pollutants; or]

[(b) The existing quality is changed due to person-induced activities unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing a modification of existing water quality is necessary to accommodate important economic and social development in the area in which the waters are located. [The legitimate beneficial uses of these waters are impaired.]]

(5) In those cases where potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act is considered to be in compliance with all portions of this non-degradation section.

Section 3. Withdrawal of Contaminated Water. It is recognized that surface waters will, on occasion, not meet the standards and criteria established in these regulations. Withdrawal and subsequent discharge of these waters without alteration of the physical, or chemical characteristics into the same or similar water body will not be considered a violation of these regulations. The cabinet [department] will determine effluent criteria and limitations in these situations based on the quality of the raw and receiving waters. The cabinet [department] retains the right to require modification under the provisions of 401 KAR 5:035, Section 1, if water quality characteristics so dictate.

Section 4. Sample Collection and Analytical Methodology. All methods of sample collection, preservation, and analysis used to determine conformity or nonconformity with water quality standards shall be in accordance with those prescribed in 40 CFR Part 136, as amended, when applicable. Other methods not found in the above reference may be used where appropriate if approved by the cabinet. [Sample and analytical procedures will be conducted in a manner consistent with recommendations in "Standard Methods for the Examination of Water and Wastewater" (latest edition), "Methods for Chemical Analysis of Water and Wastes" (EPA), and other methods as determined by the department.]

Section 5. Mixing Zones. The following guidelines and conditions are applicable in all mixing zones: (1) The cabinet shall, on a case-by-case basis, specify definable geometric limits for mixing zones. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones.

(2) Concentrations of toxic substances which exceed the ninety-six (96) hour LC50 or other appropriate LC50 tests for representative indigenous aquatic organisms are not allowed at any point within the mixing zone. **A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the cabinet. Concentrations of toxic substances which exceed one-third (1/3) the ninety-six (96) hour LC50 or other appropriate LC50 tests for representative indigenous aquatic organisms are to be met at the edge of the zone of initial dilution. Chronic criteria for the protection of aquatic life are to be met at the edge of the allowable mixing zone.**

(3) The location of a mixing zone shall not interfere with spawning areas, nursery areas, fish migration routes, public water supply intakes, bathing areas, nor preclude the free passage of fish or other aquatic life.

(4) Whenever possible the mixing zone shall not exceed one-third (1/3) of the width of the receiving stream, and in no case shall exceed one-half (1/2) of the cross-sectional area.

(5) In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.

(6) In all cases, a mixing zone must be limited to an area or volume which will not adversely alter the legitimate uses of the receiving water; nor shall a mixing zone be so large as to adversely affect an established community of aquatic organisms.

(7) In the case of thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with all provisions of this section.

(8) Criteria listed in Section 4 of 401 KAR 5:031 do not apply in the mixing zone. [The provisions of this regulation shall be unseverable from the provisions of 401 KAR 5:026, 401 KAR 5:031, and 401 KAR 5:035.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 15, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald J. Challman

(1) Type and number of entities affected: Generally the entities affected by this regulation irrespective of the proposed changes include: (1) entities required to treat wastewater (the regulated public); (2) fishing and recreational enthusiasts; and (3) the general public. A more detailed description of entities affected is contained in the Regulatory Impact Analysis (RIA) prepared for 401 KAR 5:031, Water quality standards, which is a companion regulation of this one.

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

1. First year: In the short-run, no additional costs to the regulated community should result from this regulation. Savings to entities affected by the regulation are fairly significant and relate primarily to maintaining community water supplies, viable fishery resources, water-based recreational opportunities, and Kentucky's unique and exceptional Outstanding Resource Waters. See RIA prepared for the companion regulation 401 KAR 5:031 for further details.

2. Continuing costs or savings: Costs over the long-run will continue to escalate for the regulated community corresponding to economic development and additional waste inputs. The distinction being made here is that these are not new costs resulting from this regulation. Regulated entities are aware of these continuing and long-standing facility compliance requirements and are therefore anticipating cost increases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation specifies general provisions to guide the Commonwealth's water quality standards program. Numerical and narrative criteria (water quality 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) enforcement process leading to 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 have internalized associated costs with normal budget appropriations. This regulation as it relates to the operation of the Cabinet does not change the basis for routine procedures involved in managing construction grants, permitting, compliance monitoring or enforcement.

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

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 establishes general provisions for guiding the water quality standards program, providing the basis for permitting, compliance monitoring and enforcement actions where necessary.

(3) Assessment of anticipated effect on state and local revenues: Changes to this regulation will not by themselves have an effect on state and local revenues. Over the long-run, state and local government will have to increase expenditures associated with wastewater treatment corresponding to economic growth and development. Additional impacts of this and other companion regulations are discussed in the RIA prepared for 401 KAR 5:031.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Several suggestions were made, however, rejected when revising the regulation. In relation to mixing zones, one commenter suggested that headwater streams be included as exempt from water quality standards if downstream waters are protected and if there is no acute toxicity from a discharge into a headwater stream.

The suggestion that headwater streams receive similar exemptions from water quality standards as mixing zones was rejected. It is beyond the scope of this trennial review to devote the time and effort required to fully analyze the implication of such an exemption. It would appear that such an exemption would result in certain streams being used for waste transport or assimilation which is contrary to the basic premise of the water quality standards program.

Under the provisions of withdrawal of contaminated water, it was suggested that this section be changed to provide dischargers with full relief from meeting stream standards where current levels of technology are not sufficient or economically justifiable to meet stream criteria. The addition of new conditions allowing for relief of meeting stream standards due to the use of contaminated water broadens the intent of this provision. It was originally meant to provide relief for those instances when the water was used for once-through cooling purposes. The section will remain unchanged. However, new wording in 401 KAR 5:031 for site-specific criteria development should be broad enough to allow for dischargers to have relief when discharging to waters which have higher parameter concentrations than current criteria allow.

Other suggestions have been incorporated in the regulation. Additionally, certain minor changes were made to clarify existing requirements or practices of the state and regulated community.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: Persons reviewing this regulation are encouraged to review the RIA prepared for 401 KAR 5:031.

Regulation 401 KAR 5:026, 401 KAR 5:029, and 401 KAR 5:031 are companion regulations. Regulation 401 KAR 5:026 establishes legitimate stream uses; 401 KAR 5:029 sets out general provisions for all wastewater dischargers; and 401 KAR 5:031 specifies numerical and narrative criteria that must be maintained to protect legitimate stream uses. Each regulation is dependent on the others and the resulting impacts are similar, if not the same. Conclusions of the RIA for 401 KAR 5:031 are not repeated here in order to reduce the typing of the Cabinet and of those who prepare the Administrative Register.

Tiering:
Was tiering applied? No. Tiering was not applied since the regulation affects all entities required to treat wastewater irrespective of facility ownership, capacity, or unit process or treatment employed.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: General provisions
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
MEASURE'S PURPOSE: Specifies general provisions including definitions and abbreviations, a non-degradation policy, provisions governing mixing zones and the withdrawal of contaminated water, and sample collection and analytical methods.
PROVISION/MECHANICS: Regulation specifies general provisions that must be met by all wastewater discharges. General provisions serve to guide the Commonwealth's water quality standards program. Numerical and/or narrative criteria (water quality standards) associated with stream use classifications 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 beneficial uses of the subject waters.
FISCAL EXPLANATION: Publicly-owned treatment works in the basins will be subject to limitations imposed by the regulation. In the short-run, no additional costs above that already required of local government should result. In the long-run, many of the basins cannot assimilate the wastes associated with growth and development without a corresponding increase in the size and sophistication of wastewater operations and processes. 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.
PREPARER: Donald J. Challman

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

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 224.020, 224.060
NECESSITY AND FUNCTION: This regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. [Allowance for mixing zones and] Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws.

[Section 1. Mixing Zones. The following guidelines are applicable in determining all mixing zones: (1) The department shall, on a case-by-case basis, specify definable, geometric limits for mixing zones. Applicable limits shall include but may not be limited to the linear distances from the point of discharge, surface area involvement, volume of receiving water, and taking into account other nearby mixing zones.]

[(2) The mixing zones shall be free from pollutants which are in excess of 0.44 times the 96 hour LC50 for a representative indigenous aquatic organism.]

[(3) The location of a mixing zone shall not interfere with spawning areas, nursery areas, fish migration routes, public water supply intakes, bathing areas, nor preclude the free passage of fish or other aquatic life.]

[(4) Whenever possible the mixing zone shall not exceed one-third (1/3) of the width or cross-sectional area of the receiving stream, and in no case shall exceed one-half (1/2) of this volume.]

[(5) In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.]

[(6) In all cases, a mixing zone must be limited to an area or volume which will not adversely alter the legitimate uses of the receiving water; nor shall a mixing zone be so large as to adversely affect an established community of aquatic organisms.]

Section 1. [2.] Nutrient Limits. (1) In surface impoundments and their tributaries where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the cabinet [department].

(2) The affected surface waters will be designated as nutrient limited.

Section 2. [3.] Minimum Criteria Applicable to all Surface Waters. The following minimum water

quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions specified in 401 KAR 5:029, Section 5(2). Surface waters shall not be aesthetically or otherwise degraded by substances that:

(1) Settle to form objectionable deposits;

(2) Float as debris, scum, oil, or other matter to form a nuisance;

(3) Produce objectionable color, odor, taste, or turbidity;

(4) Injure, be toxic to or produce adverse physiological or behavioral responses in humans, animals, fish[, shellfish,] and other aquatic life;

(5) Produce undesirable aquatic life or result in the dominance of nuisance species;

(6) Cause the following changes in radionuclides:

(a) Cause the gross total alpha particle activity (including radium-226 but excluding radium and uranium) to exceed fifteen (15) pCi/l;

(b) Cause combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross particle activity does not exceed five (5) pCi/l);

(c) Cause the concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

(d) Cause the concentration of tritium to exceed 20,000 pCi/l;

(e) Cause the concentration of total Strontium-90 to exceed eight (8) pCi/l.

Section 3. [4.] Use Classifications and Associated Criteria. (1) Surface waters may be designated as having one (1) or more of the following legitimate uses and associated use criteria. The classifications in Sections 4, 5, 6, and 7 [and 8] include the most common usage of surface waters within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Section 2 [3] and the indicated use criteria represent minimum conditions necessary to protect designated surface waters for that use.

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. When this condition occurs during periods when stream flows are below the [seven (7) day ten (10) year] low flow which is used by the cabinet to establish effluent limits for wastewater treatment facilities **consistent with the definition contained in 401 KAR 5:029, Section 1(1)(n)**, a discharger shall not be considered a contributor to instream violations of water quality standards, provided that [maximum] treatment in compliance with permit requirements is maintained.

Section 4. [5.] Aquatic Life. (1) Warmwater aquatic habitat. The following parameters and associated criteria are for the protection of productive warmwater aquatic communities, fowl, animal wildlife, arborous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ [3] shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l $CaCO_3$ [3], no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than 6.0 nor more than 9.0 and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed 31.7 degrees Celsius (eighty-nine (89) degrees Fahrenheit):

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet will determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. **As a guideline, the water temperature for all surface waters shall comply with the limits shown in the following table:**

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

[The maximum temperature rise other than the effects of a mixing zone shall not exceed the natural temperature by 2.8 degrees Celsius, (five (5) degrees Fahrenheit), with a maximum rate of change not to exceed one (1) degree Celsius, (1.8 degrees Fahrenheit), per hour. The department will maintain guidelines for maximum daily average temperatures based on available data. The department may determine that deviations from these guidelines will be allowed upon the submission of adequate supporting data on naturally occurring temperatures for a specific location. Furthermore, as a guideline, the water temperature for all surface waters should not exceed the maximum limits shown in the following table:]

[Table I
Stream Maximum Temperature
for Each Month in °F and °C

Month	°F	°C
January	50	10.0
February	50	10.0
March	60	15.6
April	70	21.1
May	80	26.7
June	87	30.6
July	89	31.7
August	89	31.7
September	87	30.6
October	78	25.6
November	70	21.1
December	57	13.9]

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made. [The allowable temperature increase in impounded waters shall be limited to 1.7 degrees Celsius, (three (3) degrees Fahrenheit), above the natural seasonal norm.]

(e) Dissolved oxygen:

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average and at no time should the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids:

1. Total dissolved solids: Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids: Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia: The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time in stream after mixing as illustrated in the table entitled "Instream Ammonia-N Concentrations," filed herein by reference. Copies may be obtained from the Division of Water, Fort Boone Plaza, 18 Reilly Road, [Quality, 1065 Highway 127 South, Century Plaza,] Frankfort, Kentucky 40601.

(h) Phenolic compounds: The concentration of phenolic compounds shall not exceed 5 ug/l as an instream value.

(i) [(h)] Toxics:

1. The allowable instream concentration of toxic substances [materials] which are noncumulative or [and] nonpersistent (half-life of less than 96 hours) shall not exceed 0.1 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous aquatic organism(s).

2. The allowable instream concentration of toxic substances which are bio-accumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed 0.01 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous aquatic organism(s).

3. Where specific application factors have been determined for a toxic substance such as an acute/chronic ratio or water effect ratio, they may be used instead of the 0.1 and 0.01 factors listed in this subsection upon approval by the cabinet.

4. [3.] [Maximum] Allowable instream concentrations for specific parameters are outlined in Table I [II]. **These values are based on protecting aquatic life from chronic toxicity.**

Table I [II]
Warmwater Aquatic Habitat Criteria[1]

Parameter [Contaminant]	[Maximum] Concentration [Level]
Arsenic	50 ug/l
Beryllium	11 ug/l soft water[2]
	1100 ug/l hard water[2]
Cadmium	4.0 ug/l soft water[2]
	12.0 ug/l hard water[2]
Chlordane	0.0043 ug/l
Chloride	600 mg/l
Chlorine, total residual	10 ug/l
Chromium	100 [50] ug/l
Cyanide, Free	5 ug/l
Hydrogen Sulfide (undissociated)	2 ug/l
Iron	1.0 mg/l[3]
Mercury	0.05 ug/l
[Phenolic Compounds	5 ug/l]
Phthalate Esters	3 ug/l
Polychlorinated Biphenyls	0.0014 ug/l
[Phenol	5 ug/l]
Zinc	47 [50] ug/l

[1]Metal criteria, for purposes of this regulation, are total recoverable metals to be measured in an unfiltered sample.

[2]Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of 0 to 75 mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over 75 mg/l.

[3][For low flow streams,] The daily average total recoverable iron concentration shall not exceed [is limited to] 3.5 mg/l when it is established that there will be no damage to aquatic life.

(2) Coldwater aquatic habitat. The following parameters and their associated criteria are for the protection of productive coldwater aquatic communities and ["put and take" trout] streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warmwater aquatic life also apply to the protection of coldwater habitats with the following additions:

(a) Dissolved oxygen:

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

(c) Total residual chlorine [residual]. The total residual chlorine [residual] shall not exceed two (2) ug/l as an instream value.

Section 5. [6.] Domestic Water Supply Use. Maximum allowable instream concentrations for specific parameters, to be applicable at the point of withdrawal for use for domestic water supply [withdrawal] from surface water sources are specified in Table II [III]:

Table II [III]
Domestic Water Supply Source Criteria[1]

Parameter [Contaminant]	[Maximum] Concentration [Level]
Barium	1 mg/l
Chloride[, Total]	250 mg/l
Chromium[, Total]	0.05 mg/l
Color	75 Platinum-Cobalt Color Units
Copper	1 mg/l
Fecal Coliform	2000/100 ml (Geometric mean)
Fluoride[, Total]	1 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
[Mercury	0.002 mg/l]
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO_3-N, as Total)	10 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Sulfate[, Total]	250 mg/l
[Zinc	5 mg/l]
Total Dissolved Solids	750 mg/l

[1]See note 1 in Table II

Section 6. [7.] Recreational Waters. (1) Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in more than twenty (20) [ten (10)] percent of all samples taken during the month; these limits are applicable during the recreation season. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of the year.

(b) pH shall be between 6.0 to 9.0 and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality [during the recreation season of May 1 through October 31]. The following criteria apply to waters classified for secondary contact recreation use during the entire year.

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in more than twenty (20) percent of all samples taken during the month. [Fecal coliform shall not exceed 5,000 colonies per 100 ml in more than ten (10) percent of the samples taken during any thirty (30) day period.]

(b) pH shall be between 6.0 to 9.0 and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 7. [8.] Outstanding Resource Waters. This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion:

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act.

2. Waters designated under the Federal Wild and Scenic Rivers Act.

3. Waters identified under the Kentucky Nature Preserves Act which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended. [Any surface waters designated under the Kentucky Wild Rivers Act, the Federal Wild and Scenic Rivers Act, or identified under the Kentucky Nature Preserves Act, or that support federally recognized rare or endangered species shall automatically be included in this category.]

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet [department] providing:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique **native** aquatic flora or [and] fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters designation: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet [department] shall determine water quality criteria for these waters as follows: [on a case specific basis.]

(a) At a minimum, the criteria of Section 2 of this regulation and the appropriate criteria associated with the stream use classification assignments in 401 KAR 5:026, Section 7, are

applicable to these waters.

(b) Where the values identified for an outstanding resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 5:026, Section 7, and will be subject to promulgation under Kentucky's administrative rulemaking procedures.

(3) Determination of classification:

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8). [The department will evaluate the proposal. The following shall be considered:]

[1. Existing water quality;]

[2. Current use;]

[3. Aesthetic, biological, morphological and habitat characteristics of the waters;]

[4. Occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique biota;]

[5. Economic and social consequences of the proposed classification;]

[6. Other justification given for the proposed classification.]

(b) The cabinet shall review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this regulation. The cabinet shall document the determination to deny or to propose reclassification, and a copy of such decision shall be served upon the petitioner and other interested parties.

(c) [(b)] After considering all of the pertinent data, a reclassification, if appropriate, shall be made pursuant to 401 KAR 5:026, Section 6.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 664.15 to its confluence with the Mississippi River. These waters are subject to all applicable provisions of 401 KAR 5:026, 401 KAR 5:029, and this regulation.

(1) Dissolved oxygen: concentrations shall average at least 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time provided that a minimum of 5.1 mg/l at any time is maintained during the April 15-June 15 spawning season.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent 25°C specific conductants values are 800 and 1200 micromhos/cm respectively.

(4) Maximum allowable instream concentrations for specific parameters are given below. Metal concentrations are total recoverable values unless otherwise listed.

Parameter	Concentration (mg/l)
Chromium (hexavalent)	0.05
Cyanide (total)	0.025
Lead (dissolved)	0.05
Nitrite-Nitrate-N	10.00
Nitrite-N	1.0
Phenolic compounds	0.01

Copper: When total hardness as calcium carbonate is:	Allowable concentration is:
50	0.012
80	0.018
100	0.022
160	0.034
200	0.043

Zinc: When total hardness as calcium carbonate is:	Allowable concentration is:
0-80	0.040
81-120	0.055
121-160	0.070
161-180	0.095
181-200	0.115

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. [8.] Exceptions to Criteria. (1) The cabinet may grant exceptions to the classification criteria contained in Sections 4, 5, 6 and 7 of this regulation upon demonstration by an applicant that maintenance of applicable

water quality criteria are not attainable or scientifically valid but the use classification is still appropriate. This determination must be made on a case-by-case basis with respect to a specific stream segment following an analysis for each area.

(2) The analysis must show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive Sections 4, 5, 6 and 7 criteria, or the demonstration that meeting the criteria would cause substantial and widespread economic and social impact. Site-specific criteria shall be developed utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant must supply the documentation listed in Section 5 of 401 KAR 5:026.

(3) In granting exceptions to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions to water quality criteria will be subject to review at least every three (3) years.

(5) Upon completing a review and the procedures for promulgation under administrative rulemaking, all exceptions to water quality criteria shall be listed with the respective stream segment in Section 7 of 401 KAR 5:026.

[Section 9. Variances. (1) Waters for inclusion. The cabinet [department] may grant a variance to classification criteria upon adequate demonstration that maintenance of water quality criteria now applicable are not attainable but the use classification is still appropriate. This determination must be made on a case-by-case basis with respect to a specific stream segment following an analysis of each area. The analysis must show that the necessary water quality cannot be reasonably achieved due to economic and/or technological limitations and/or naturally occurring poor water quality. All exceptions will be temporary and subject to review at least every three (3) years.]

[(2) Designation under this section shall be final orders of the department and may be appealed pursuant to KRS 224.085.]

[Section 10. The provisions of this regulation are unseverable with 401 KAR 5:026, 401 KAR 5:029, and 401 KAR 5:035.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 15, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald J. Challman

(1) Type and number of entities affected. Generally the entities affected by this regulation irrespective of the proposed changes include: (1) entities required to treat wastewater (the regulated public); (2) fishing and recreational enthusiasts; and (3) the general public. The oil and gas industry is most affected by the water quality criterion for chloride. Therefore, this industry is discussed separately from other affected entities.

Regulated Public Except Oil and Gas Producing Industry

Public and private entities who are quired to treat wastewater, range from large municipal and industrial wastewater treatment plants, through small commercial establishments, to oil and gas facilities (see Table 1). Approximately 4,314 entities are subject to various provisions of the regulation. These include approximately 1,075 publicly-owned or operated facilities composed of 144 state-owned facilities; 128 federal-owned facilities; 390 county-owned facilities; and 413 facilities owned or operated by Kentucky municipalities or special purpose local government. Publicly held facilities include 275 municipal wastewater treatment plants; 63 industries; 8 subdivisions; 362 schools; 246 small sewage treatment plants; 5 recreational facilities; 2 agricultural interests; 1 oil lease; and 114 water treatment plants. The remaining 3,239 private entities required to treat wastewater consist of 1,235 industrial treatment systems; 251 subdivisions; 17 schools; 1,291 small sewage treatment plants; 2 recreational facilities; 320 agricultural interests; 113 oil leases; and 9 water treatment plants.

TABLE 1: FACILITY TYPE BY OWNERSHIP - 1984

FACILITY	OWNERSHIP						
Type	City/ Local	Pvt.	Co.	St.	Fed.	San. Dist.	Totals
Municipal	253	1	0	0	0	21	275
Industrial[1]	12	1235	6	2	43	0	1298
Subdivision	7	251	0	0	0	1	259
School	6	17	356	0	0	0	379
Small Sewage[2]	7	1291	27	133	78	1	1537
Recreational	3	2	1	0	1	0	7
Agricultural	0	320	0	2	0	0	322
Oil and Gas Facility	0	113	0	1	0	0	114
Water Plant	102	9	0	6	6	0	123
TOTAL	390	3239	390	144	128	28	4314

[1]Consists of bituminous coal and lignite mining; other mining and quarrying; food and kindred products; chemicals and allied products; petroleum refining; rubber and plastics; stone, clay and glass manufacturers; primary metal industries; etc.

[2]Consists of eating and drinking places; real estate; hotels and other lodging places; amusement and recreation services; private households; air, highway, and water transportation services; wholesale trade; food stores; car dealers and service stations; etc.

SOURCE: Facility File, Kentucky Division of Water, 1984.

Oil and Gas Producing Industry

In addition to the above entities, the regulation directly impacts the oil and gas industry. This industry is particularly affected by the proposed numerical criterion for chloride deemed to be protective of Kentucky's aquatic life use classification.

On January 4, 1984, the Legislative Research Commission approved regulation 401 KAR 5:090, Control of water pollution from oil and gas facilities, which mandates underground injection or the transport and disposal off-site of produced water (brine) wherever economically feasible. According to the February 1983 Regulatory Impact Analysis (RIA) prepared for regulation 401 KAR 5:090, 31,440 oil and gas wells, leased or owned by 3,909 operators, were permitted by the Department of Mines and Minerals, Division of Oil and Gas (see Table 2). The impact analysis further indicated that "most sources estimate that approximately 15,500 producing oil wells and 8,500 producing gas wells (24,000 total wells) exist in the state."

TABLE 2: DISTRIBUTION OF PERMITTED OIL AND GAS WELLS BY OPERATOR SIZE, NOVEMBER 1982

	OPERATORS			WELLS		
No. of Wells Per Operator	No.	%	Cumulative %	No.	%	Cumulative %
1	1777	45.5	45.5	1777	5.6	5.6
2	653	16.7	62.2	1306	4.2	9.8
3	313	8.0	70.2	939	3.0	12.8
4	205	5.2	75.4	820	2.6	15.4
5	153	3.9	79.3	765	2.4	17.8
6	87	2.2	81.5	516	1.6	19.4
7	76	1.9	83.4	532	1.7	21.1
8	62	1.6	85.0	496	1.6	22.7
9	49	1.3	86.3	441	1.4	24.1
10	53	1.4	87.7	530	1.7	25.8
11-50	396	10.2	97.9			
51-100	53	1.4	99.3	23318	74.2	
Over 100	33	0.8	100.1			100.0
TOTAL	3909	100.1		31440	100.0	

SOURCE: Oil and Gas Permits, Oil and Gas Division, Mines and Minerals, University of Kentucky. Table included in RIA prepared for 401 KAR 5:090.

Approximately 25.8 percent of the 31,440 permitted (as opposed to producing) oil and gas wells in the state are owned by "small operators" with 10 or fewer leases according to the RIA prepared for 401 KAR 5:090. Although accounting for only a quarter of all oil and gas wells in the state, the analysis further indicated that 87.7 percent of all operators (3,428) were considered to be "small operators" as of November 1982.

Based on the above information for total permitted oil and gas wells, the RIA assumed a like distribution of wells per operator for only the 15,500 producing oil wells believed to be in Kentucky. Counting only producing wells, approximately 1,920 oil producers were operating in 1982. Of this total, approximately 1,648 oil producers were considered to be "small operators." (See Table 3).

TABLE 3: ASSUMED DISTRIBUTION OF PRODUCING OIL WELLS BY OPERATOR SIZE, NOVEMBER 1982

Number of Wells Per Operator	Percentage of Wells[1]	Number of Wells[2]	Number of Operators
1	5.6	868	868
2	4.2	651	326
3	3.0	465	155
4	2.6	403	101
5	2.4	372	74
6	1.6	248	41
7	1.7	264	38
8	1.6	248	31
9	1.4	217	24
10	1.7	264	26
11+	74.2	11,501	236
TOTAL	100.0	15,500	1,920

[1]Taken from Table 2.

[2]Given an estimated 15,500 producing oil wells in Kentucky (based on a county inspector's count), the number of wells was calculated using the percentage distribution of wells in the preceding column.

SOURCE: Table included in the RIA prepared for 401 KAR 5:090.

This analysis makes the assumption that the entities which may be adversely affected due to compliance costs associated with 401 KAR 5:090 are the primary entities affected by this regulation. An exemption from the requirements of 401 KAR 5:090 can be granted when an economic hardship has been demonstrated. Under these circumstances the cabinet will consider a surface water discharge of brine. Those that cease production as the result of 401 KAR 5:090 and are requesting the exemption are the same entities who would consider a surface water discharge. Any such discharge will be subject to water quality-based effluent limitations compatible with the 600 mg/l instream criterion for chloride.

Given the above assumption, many of the concepts discussed in the RIA for regulation 401 KAR 5:090 also apply with respect to this regulation, including certain characteristics of the primary entities affected (both type and number). For example, several factors were identified in the RIA which served to limit the entities directly impacted. First, only producing oil and gas wells are of concern. Second, the problem of brine disposal is principally associated with oil production as opposed to gas production. Third, most oil production occurs in the western part of the state where underground injection practices are less expensive and more prevalent. Entities most impacted will be in eastern Kentucky where many producers will have to change current disposal practices. Last, small operators are expected to bear the greatest burden, including possible well closure.

Under several capital investment scenarious, the RIA estimated that under the worst case situation, 463 operators would cease production as the result of 401 KAR 5:090. The intermediate estimate was that 399 operators would shut down; the least impact scenario indicated that 328 operators would be affected. (Assumed capital investments of $108,000, $75,000 and $48,000, respectively.)

The entities affected by this regulation are less, however, the difference being attributed to those who could possibly absorb the costs of a surface water discharge. Producers on large streams with sufficient assimilative capacity (dilution), and a controlled-release discharge could perhaps meet the 600 mg/l instream limit for chloride provided a modest investment. (See Appendix A for cost estimates.)

A surface discharge is not a feasible alternative when discharging to small, low-flow streams. Significant treatment will be required. The initial capital investment in current treatment alternatives are at or exceed the capital investments evaluated in the above scenarios. Installation of a Reverse Osmosis treatment system was estimated to require a capital investment of $1,407,000, greatly exceeding the worst case scenario assumed in the RIA for 401 KAR 5:090. Secondly, this treatment only reduces the brine by one-third. (See Appendix A for cost estimate.) The operating and capital costs of a heat evaporation system were estimated to approach $4 or $5 per barrel, "making this procedure economically impractical relative to disposal by underground injection," according to the RIA. If the above entities could not afford the underground injection systems evaluated in the case scenarios, they will not be able to absorb the costs of a heat evaporation system. Other techniques such as ultra filtration, mechanical evaporation, and vapor recompression are also generally unfeasible alternatives.

Given all of the above arguments, the Cabinet estimates that something less than 300-500 oil producers will be impacted by this regulation. The difference in entities affected by this regulation as opposed to 401 KAR 5:090 is attributed to individuals who could possibly absorb the costs of a treated surface water discharge. No attempt has been made to determine this number. Few of the above operators are expected to be able to absorb these costs unless located on large streams with sufficient assimilative capacity to meet the 600 mg/l instream criteria for chloride. Even then, small operators controlling few wells will not be able to absorb the minimum costs associated with a controlled release discharge.

In addition to oil field operators, the proposed chloride standard is expected to impact persons directly employed by the oil and gas industry where the provision will cause a shut-down of operations. Assuming an average of 2 employees per firm and that 300-500 producers in fact leave the industry, an additional 600-1,000 persons could be impacted by the proposed chloride standard. The impact is expected to be felt the greatest in a select group of eastern and south-central Kentucky counties where many operators will have to change current disposal practices. Table 3A below indicates total employment by county for persons employed in SIC 1311; establishments principally engaged in operating oil and gas field properties. Additional information on industry employment appears later in this analysis.

TABLE 3A
KENTUCKY
AVERAGE MONTHLY COVERED EMPLOYMENT AND TOTAL WAGES PAID IN OIL AND GAS EXTRACTION (SIC 13)
CALENDAR 1983

County	Employment	Total Wages
TOTAL	3,409	$60,909,641
Adair	87	1,078,782
Allen	14	102,319
Anderson	0	0
Ballard	0	0
Barren	29	473,735
Bath	0	0
Bell	-	-
Boone	-	-
Bourbon	0	0
Boyd	-	-
Boyle	5	165,475
Bracken	0	0
Breathitt	-	-
Breckinridge	-	-
Bullitt	0	0
Butler	0	0
Caldwell	-	-
Calloway	0	0
Campbell	0	0
Carlisle	0	0
Carroll	0	0
Carter	-	-
Casey	-	-
Christian	29	334,459
Clark	-	-
Clay	21	345,973
Clinton	143	2,093,376
Crittenden	0	0
Cumberland	53	681,811
Daviess	469	7,646,987
Edmonson	-	-
Elliott	12	134,079
Estill	99	1,602,619
Fayette	70	1,198,934
Fleming	0	0
Floyd	360	8,843,125
Franklin	0	0
Fulton	0	0
Gallatin	0	0
Garrard	0	0
Grant	0	0
Graves	0	0
Grayson	-	-
Green	9	175,981
Greenup	0	0
Hancock	13	163,575
Hardin	-	-
Harlan	0	0
Harrison	0	0
Hart	-	-
Henderson	446	8,733,562
Henry	0	0
Hickman	0	0
Hopkins	49	474,183
Jackson	0	0
Jefferson	9	103,032

Jessamine	0	0
Johnson	114	2,167,080
Kenton	0	0
Knott	-	-
Knox	-	-
Larue	0	0
Laurel	-	-
Lawrence	32	417,072
Lee	185	3,780,880
Leslie	34	710,898
Letcher	-	-
Lewis	0	0
Lincoln	0	0
Livingston	0	0
Logan	-	-
Lyon	0	0
McCracken	0	0
McCreary	0	0
McLean	5	75,903
Madison	0	0
Magoffin	98	1,563,644
Marion	0	0
Marshall	0	0
Martin	15	146,343
Mason	0	0
Meade	0	0
Menifee	0	0
Mercer	0	0
Metcalfe	4	20,554
Monroe	-	-
Montgomery	0	0
Morgan	-	-
Muhlenberg	81	1,051,545
Nelson	2	38,300
Nicholas	0	0
Ohio	68	1,069,612
Oldham	0	0
Owen	0	0
Owsley	-	-
Pendleton	0	0
Perry	-	-
Pike	145	2,878,314
Powell	26	364,105
Pulaski	20	298,262
Robertson	0	0
Rockcastle	0	0
Rowan	0	0
Russell	-	-
Scott	-	-
Shelby	0	0
Simpson	-	-
Spencer	0	0
Taylor	41	604,321
Todd	0	0
Trigg	0	0
Trimble	0	0
Union	49	887,791
Warren	22	288,336
Washington	-	-
Wayne	10	133,735
Webster	21	210,919
Whitley	-	-
Wolfe	-	-
Woodford	-	-
Unclassified by county	127	2,381,469

State total does not equal some of county employment data due to rounding.

Dash indicates nondisclosure - less than 3 firms or 1 firm comprising 80 percent or more of total employment.

SOURCE: Department for Employment Services, Statistical Services Section.

A decrease in production and employment in one sector (the oil and gas industry sector) will bring about multiple impacts in production and employment in other sectors. These include consumer goods industries serving industry employees, and equipment, services, and other inputs needed by the oil and gas drilling sector. Based on a multiplier of 2.0, an additional 900-1500 persons employed in establishments serving the oil and gas producing industry could be affected by the proposed chloride standards given other estimates on the decline in operators and direct employment. Again, the greatest burden is expected to be borne by major oil producing counties in eastern and south-central Kentucky.

General Public and Other Entities

In addition to the regulated public mentioned in the preceding paragraphs, fishing and recreation enthusiasts, the aquatic environment of Kentucky, and the general public are affected by this regulation. 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 Tygarts Creeks, 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. A large portion of the above population will benefit from maintaining viable fishery resources, water-based recreation, community water supplies, and the unique and outstanding characteristics of Kentucky's Outstanding Resource Waters.

Approximately 2.7 million Kentucky citizens will be impacted i a positive sense by the maintenance of community drinking water supplies derived from surface waters. Numerical criteria for assuring the bacteriological safety and chemical quality of raw surface water sources for domestic use will be applied at the point of withdrawal. Large communities benefiting from the maintenance of surface water supplies include Ashland, Hopkinsville, Owensboro, Lexington, Frankfort, Louisville, Fort Mitchell, Bowling Green, Fort Thomas, Elizabethtown, Paducah, Henderson and Madisonville. Intermediate size communities include Berea, Richmond, Lebanon, Maysville, Harrodsburg, Mt. Sterling, Greenville, Bardstown, Hartford, Hazard, Pikeville, Somerset, Morehead, Georgetown, Shelbyville, Franklin, Campbellsville, Corbin, Versailles, Jeffersontown, Barbourville, London, Radcliffe, Fort Knox, Cynthiana, Winchester, Glasgow, Danville, Florence, and Middlesboro. Additionally, any non-community surface water supplies serving approximately 31,468 Kentuckians will benefit. These range from many of Kentucky's schools and churches to mobile home parks to small restaurants and other commercial establishments. A complete listing is

available upon request to the Division of Water's Drinking Water Branch.

According to a study by the U.S. Fish and Wildlife Service entitled the "National Survey of Fishing, Hunting, and Wildlife Associated Recreation - Kentucky," 734,600 Kentucky residents and 318,000 out-of-state residents fished in Kentucky lakes and streams in 1980. Based on the draft 1984 Statewide Comprehensive Outdoor Recreation Plan (SCORP), 37.9 percent of Kentucky's population will fish at least one time per year, equalling approximately 1.4 million individuals. Sample results of the revised 1984 SCORP, which are considered to be statistically reliable at the Area Development District level, also indicate that 29.4, 11.5, and 7.7 percent of the population will participate in boating, water skiing and canoeing activities, respectively. Taken together, approximately 1.7 million Kentuckians will spend at least one day per year boating, canoeing or water skiing.

Breakdowns for waterfowl hunting and beach swimming as contained in the 1978 SCORP were not included in the updated assessment. Individuals who participate in these activities will also be positively impacted by the regulation.

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

1. First year:

Regulated Public Except Oil and Gas Industry

With the exception of the oil and gas industry, no additional costs in the short-run should result above that (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. Since the proposed modifications do not represent a significant 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 (excepting the oil and gas industry).

Most of the proposed modifications (1) further clarify existing requirements; (2) improve various definitions and procedural aspects; or (3) attempt to harmonize the regulation with those of the federal government and Kentucky's neighboring states who are members of the Ohio River Valley Sanitation Compact (ORSANCO).

Perhaps the most significant changes (with the exception of chloride) relate to Outstanding Resource Waters and Exceptions to Criteria. Other changes include greater clarification of permissible water quality in mixing zones; improved temperature requirements; and numerical limits for zinc, PCBs and chlordane for the protection of aquatic life.

The chloride standard could also affect entities other than the oil and gas producing industry described below. The chloride standard could affect clothing and textile manufacturers and municipalities located on small streams who receive waste water containing dyeing agents utilized in the textile industry. Dyeing agents are generally treated with chlorine which can lead to the creation of chlorides in the pretreatment process. Certain manufacturing establishments and municipalities located on small streams could be affected by the 600 mg/l chloride standard. The exact number of entities affected by the chloride standard and the costs that might be incurred, however, cannot be determined.

Technical arguments supporting these changes will be addressed in the affirmative consideration process. In terms of economic impacts, none of the changes are expected to significantly affect the regulated public. For example, changes made to the mixing zone and temperature provisions are the result of what is currently practiced by the state and regulated entities, although they are not clearly stated in the existing regulation. Secondly, the concentration of zinc, chlordane and PCBs are limited through the effluent permitting process as the result of federal requirements. These limitations have been added to the revised regulation.

This is not to say that the attainment of water quality, commensurate with instream numerical criteria, 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 is that these costs are not new costs resulting from the proposed regulatory changes. Entities affected are aware of these continuing, long standing facility compliance requirements.

Oil and Gas Producing Industry

In Section 1, the Cabinet presented the argument that the entities affected by this regulation are also the entities affected by regulation 401 KAR 5:090, Control of water pollution from oil and gas facilities. The Cabinet also believes that the economic ramifications of 401 KAR 5:090 also apply with respect to this regulation since the affected entities do not differ significantly. This includes certain statements and conclusions of the RIA relating to potential losses in production, employment and severance taxes.

Excerpts of the major findings of the RIA include:

- The direct impact on the oil and gas industry in Kentucky will be the costs of compliance with the new regulation. The cost of compliance will include the capital investment required to install an acceptable system for discharging brine and the cost to operate that system.

- The total cost of compliance to the oil and gas industry in Kentucky, obviously, would depend on the method and combination of methods elected by the operators. It is impossible to consider all of the possible ways the industry may choose to comply. An estimate of total cost to the industry is further complicated because the volume of brine produced is unknown.

- Kentucky's production of oil and gas represents a small portion of the nation's and the regulation could not have a significant impact on domestic output. The following is a

summary of the oil and gas industry in Kentucky.

In 1981, Kentucky's crude oil production was about 17.9 thousand barrels per day which represented approximately 0.21 percent of the nation's total production. Production of natural gas in Kentucky was about 63 billion cubic feet in 1981, or about 0.33 percent of the national output. The number of wells (oil, gas, dry, and service) drilled was 1,780 in Kentucky during 1981, this number represented approximately 2.2 percent of the wells drilled in the United States during 1981. Oil and gas production in Kentucky is small relative to the national total.

Oil and/or gas is produced in 63 of Kentucky's counties but most oil and gas production in the state occurs in a few counties. A cluster of 8 counties in western Kentucky accounts for approximately 55 percent of Kentucky's oil production (1982 figures), 8 counties in eastern Kentucky account for another 25 percent. And 85 percent of the state's production of oil is located in 17 counties. Natural gas is produced in 31 of Kentucky's counties but 8 counties produce about 90 percent of the total. Approximately 97 percent of the state's natural gas production is produced in eastern Kentucky.

- In certain markets, a regulation may cause firms to leave the industry to the extent that competition would be lessened. The oil and gas industry in Kentucky would not experience such an impact. This industry in Kentucky is made up of a few large firms and a larger number of small firms. The large firms would be able to absorb the regulation impact. Some of the small firms (operators) may leave the industry. With the departure of some small firms from the industry, the market structure would remain essentially the same: a few large firms and a large number of small firms.

- Oil and gas prices will be unaffected by the proposed regulation. Kentucky's contribution to the national market is so small that the domestic market would not be affected by any changes in the state's output or the cost of that output.

- Most of the information on employment in the industry relates to workers covered under the unemployment insurance program. Figures for covered employment understates actual employment. An entrepreneur is not likely to be subject to provisions of the law unless he pays for services in the amount of at least $1500 per year.

- Covered employment in the petroleum and natural gas industry (SIC 13) in 1981 amounted to about 3,420 workers. About two-thirds of these were in the sub-category SIC 1311 (crude petroleum and natural gas), the category affected by the proposed regulations. SIC 1311 consists of establishments primarily engaged in operating oil and gas field properties.

  Most of the covered employment in SIC 1311 is located in approximately 12 counties in eastern Kentucky and about 5 counties in west central Kentucky. In terms of Area Development Districts (ADDs), most of the employment is in the Big Sandy and Kentucky River ADDs in eastern Kentucky and in the Green River ADD of western Kentucky.

  In counties for which SIC 1311 employment is highest - Daviess, Floyd, Henderson, Lee, Perry, and Pike - the portion of total covered employment is generally less than 2 percent except for Lee County in which it exceeds 10 percent.

  Unemployment in the industry has been relatively low, especially in recent years. Workers that become unemployed are eligible for a maximum of $140 per week for a period of 26 weeks or, if the extended benefits program is in effect, for a period of 39 weeks. In 1981, the actual average weekly benefit amount was $101, and the average duration of unemployment was 14.2 weeks.

- The adjustment costs associated with implementation of the proposed regulation include (a) the opportunity costs of resources unemployed as a result of compliance, (b) the costs associated with the reallocation of the unemployed resources, and (c) the payments made to the unemployed persons (e.g., unemployment compensation). Because relatively few persons will be affected, the adjustment costs associated with individuals are estimated to be insignificant; particularly when compared to the adjustment costs that normally occur in a technologically changing society. The maximum unemployment compensation in Kentucky is $140 per week for a period o 26 weeks or for 39 weeks if the extended benefit program is in effect. Other than labor, the unemployed resources would be largely capital equipment. The adjustment costs associated with capital is difficult to quantify; it is assumed that some of the equipment is transferable easily to other sites for use.

- A reduction in oil and gas production would cause a multiple decrease in income and employment as a result of adverse secondary effects. These arise in two major ways - expenditures of unemployed workers for consumer goods decline and thus increase unemployment in consumer goods industries; raw materials, equipment, and other inputs to the oil and natural gas drilling sector decline and cause secondary unemployment to rise.

  The size of the "multiplier" effect indicates the extent to which the initial change in employment and income will affect related industries. Although the size of the multiplier is presumed to vary over time, and to differ from area to area and industry to industry, the range of possible values can be specified. For example, the Associated Industries of Kentucky assumes a multiplier of 1.74 for new manufacturing jobs in Kentucky. In other words, for example, for every 100 new manufacturing jobs in the state, an additional 74 jobs would be created in related nonmanufacturing jobs.

  Another recent study focuses on the multiplier in terms of the local impact for Kentucky.

According to this study, the local impact multiplier for mining is about .85 in small Kentucky counties (population less than 15,000) and about 1.02 in large counties (population more than 15,000).

Two other studies consider the total employment impact slightly higher than 2 for mining. A University of Missouri study sets the multiplier at 2.33; a U.S. Department of Interior study, at 2.20

Thus it might be concluded as a best estimate that the multiplier for Kentucky oil and natural gas drilling would be about 2. Each job lost in the oil and gas fields would result in an additional job lost in related sectors.

- The oil production tax (KRS 137.120) amounts to 4.5 percent of the market value of crude petroleum produced in Kentucky. The tax applies when the crude petroleum is first transported from the tanks or other receptacle located at the place of production.

  The natural gas tax, a mineral tax (KRS 143A.010 and 143A.020) amounts to 4.5 percent of the gross value of the product. It is levied on every taxpayer engaged in severing and/or processing of natural gas and natural gas liquids.

Footnotes:

1./ Associated Industries of Kentucky, "What 100 New Manufacturing Jobs Means to a Kentucky Community," September 1980.

2./ Eldon Smith, Craig Infanger, and John Stoll, How New Industry Affects Employment of Rural Kentucky Residents, Kentucky Development Cabinet.

3./ These and other studies described in Johannes Von Veen, Employment Impact of An Autonomous Expansion of Non-Farm Employment in Rural Kentucky Counties, Master's Thesis, University of Kentucky.

  Since mid-1981, an amount equal to one-half of the tax collected on natural gas and oil is transferred to the Local Government Economic Assistance Fund (KRS 42.450(2)). Funds are distributed among the mineral producing counties on the basis of taxes collected on several minerals (KRS 42.470). However, 10 percent of the funds allocated to each county are allotted to incorporated areas within the county in accordance with their population as a portion of population of the county (KRS 42.475).

  During calendar year 1982, the tax severance on oil production amounted to $10,307,000; on gas, $3,262,000. During fiscal year 1981-82, allocations made to county governments from severance taxes on all minerals amounted to $8,542,000; to city governments, $947,000. It is estimated that oil and gas severance taxes account for 90-95 percent of the total mineral severance tax.

- About 97 percent of Kentucky's total production of natural gas is in eastern Kentucky as part of the Appalachian Basin; the remaining 3 percent is in western Kentucky as part of the Illinois Basin. Petroleum production in contrast is centered more in western Kentucky with about 75 percent located there. Output of natural gas and oil by major producing county for 1982 is shown in Table 4.

- The problems created by disposal of formation water appeared to be associated primarily with oil production rather than gas production. Most of Kentucky's oil production is in the western part of the state. Underground injection of formation water in the western part of Kentucky is less expensive than in eastern Kentucky, and this process is currently in use by many oil producers in the western part of the state.

- To the extent that future production of oil and gas may be lost from the impact of the proposed regulation, it will be due largely to small operators leaving the industry. Moreover, the greatest impact will be in eastern Kentucky.

- While the larger operators may be able to absorb the cost of compliance, some of the small operators may be unable to comply and remain viable producers. Most of Kentucky's producing oil wells are classified as "stripper" wells, and these wells produce approximately 77 percent of the state's output of oil. (A stripper well is defined as one that produces less than 10 barrels per day.)

  Also, a large number of operators in Kentucky operate only a few wells. About 46 percent of the operators have only one well, and approximately 82 percent of the operators have six or fewer wells. A substantial number of these small operators would be unable to absorb the cost of installing an underground water disposal system and may be unable to comply through alternative methods.

- Under the worst case situation, annual production loss (oil) is estimated to be approximately $14.4 million, and the severance tax revenue loss would be $650 thousand; the number of operators ceasing operations would be approximately 463.

  The least impact is estimated to be a production loss of $5.5 million, a loss of $248 thousand in severance tax, and 328 operators ceasing operation.

  The intermediate estimate is a loss in production of $8.7 million, and a loss of $390,000 in severance tax. An estimated 399 operators would cease production.

  As a percent of Kentucky's fiscal year 1983-84 budget, the estimated loss of severance tax would be as follows: high estimate, 0.028 percent; low estimate, 0.009 percent, intermediate estimate, 0.015 percent.

The loss of gas production is more difficult to assess. It appears that no more than 20 percent of natural gas wells produce water and some of the water produced is potable. The regulation would have an impact on gas production but this impact would be less than on oil production.

TABLE 4: MAJOR OIL AND GAS PRODUCING COUNTIES IN KENTUCKY, 1982

Natural Gas		Oil	
County	Quantity (MCF)	County	Quantity (barrels)
Pike	17,575,846	Henderson	1,164,211
Floyd	11,232,374	Union	656,415
Knott	8,744,975	Muhlenberg	603,095
Leslie	5,544,206	Lee	535,593
Martin	4,420,210	Clinton	403,465
Perry	3,993,300	Daviess	382,283
Letcher	3,195,795	Webster	343,785
Hopkins	1,261,949	McClean	304,381
Grayson	943,838	Ohio	288,752
Bell	931,226	Hopkins	281,919
Clay	867,906	Adair	239,091
Lawrence	508,190	Cumberland	223,101
All other		Magoffin	203,478
counties	3,165,538	Letcher	161,995
		Perry	151,028
State Total	62,385,353	Lawrence	132,343
		Johnson	110,903
		All other	
		counties	1,080,343
		State Total	7,265,181

SOURCE: Kentucky Revenue Cabinet. Table included in RIA of 401 KAR 5:090.

POTENTIAL PROBLEM CREEKS - ELEVATED CHLORIDES LEVELS*

Kentucky River Basin
(1) S.F. Red River
(2) Cow Creek
(3) Furnace Fork
(4) Billey Creek
(5) Big Sinking Creek - trib. of Miller's Creek
(6) Miller's Creek
(7) Sand Lick Creek - S.F. Red River trib.
(8) Stump Cave Branch - S.F. Red River trib.
(9) Barker Branch - S.F. Red River trib.
(10) M.F. Red River
(11) Tickey Fork
(12) Rogers Fork
(13) Needmore Hollow Branch
(14) Woodward Creek
(15) Stewart Fork
(16) Little Sinking Creek
(17) Bald Rock Fork
(18) Caves Fork
(19) Townsend Fork
(20) Wolfpen Creek
(21) Contrary Creek
(22) Clear Branch
(23) Hardwick Creek
(24) Zachariah Creek
(25) Sand Cave Beach
(26) Whites Branch
(27) Ky. River at various times of year as far down as Nicholasville

Big Sandy River Basin
(1) Blaine Creek
(2) L.F. Blaine Creek
(3) R.T. Fork Blaine Creek
(4) (1) UT to Keaton Fork, Blaine Creek
(5) (2) UT to Keaton Fork, Blaine Creek
(6) Paint Creek
(7) Big Mine Fork
(8) Little Paint Creek
(9) Big Creek
(10) Sulfur Fork

Green River Basin
(1) Buck Creek
(2) Little Difficult Creek
(3) Big Pitman
(4) Flat Rock Creek
(5) Oil Well Branch
(6) Beards Branch
(7) Little Pitman Creek

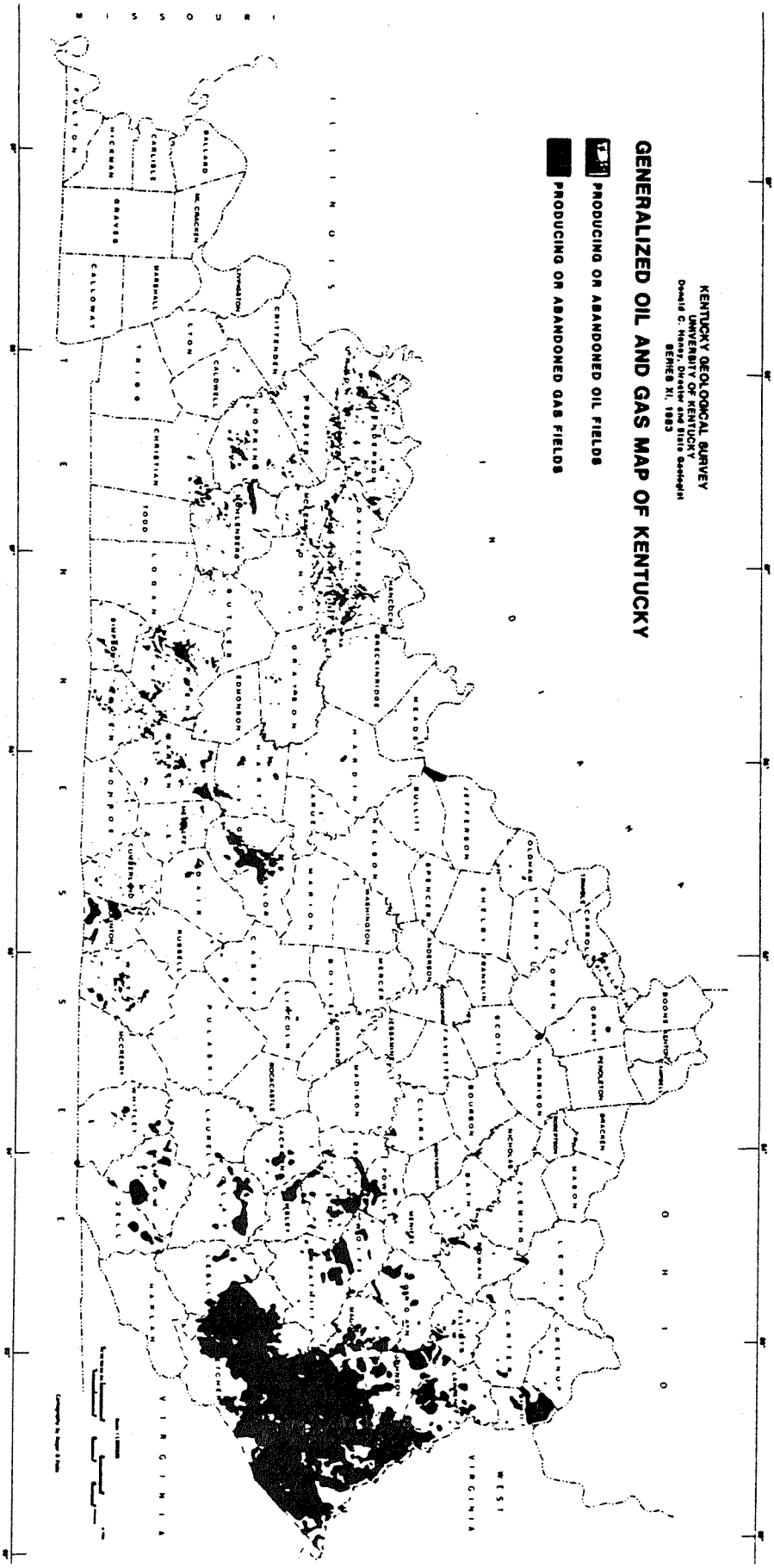
Upper Cumberland Basin
(1) Little South Fork
(2) Illwill Creek

*Chloride levels exceeding 50 mg/l based on a preliminary review of available data.

Barring adjustments due to more recent date and inflation, the cabinet believes the above estimates reflect the degree and magnitude of the socioeconomic ramifications associated with this regulation. As stated previously, the cabinet will consider a surface water discharge compatible with the instream chloride criteria only when all of the requirements of 401 KAR 5:090 have been exhausted. Persons who are possibly considering a surface discharge include those who cannot meet the requirements of 401 KAR 5:090 due to demonstrated economic considerations. Certainly those ceasing production as the result of 401 KAR 5:090 could demonstrate an economic hardship. These individuals are the ones principally impacted by this regulation.

Since the entities affected are unchanged, and since the costs of treating a surface water discharge are comparable to those of the injection systems evaluated in the RIA prepared for 401 KAR 5:090, there is no good reasons to believe that entities will be better able to comply with this regulation. Therefore the attendant loss in production, employment and severance taxes associated with 401 KAR 5:090, also apply with respect to this regulation. If anything, the socioeconomic implications of this regulation will be less. Some amount of affected entities will be able to absorb the costs of a surface discharge if located on large streams with sufficient assimilative capacity to meet the 600 mg/l chloride limit. In this regard, the above impacts represent the worst case scenario.

In addition to the mineral severance tax, imposition of the 600 mg/l chloride limit could lead to a similar decline in property tax revenues derived from oil and gas. These revenues are distributed to the state, counties, cities, and school districts. Property valuation assessments are made only on producing oil and gas facilities. Tables 4A and 4B below indicate the property valuation assessment and the distribution of tax revenues for major oil and gas producing counties. The royalty share of oil and gas property assessments is approximately


GENERALIZED OIL AND GAS MAP OF KENTUCKY
PRODUCING OR ABANDONED OIL FIELDS
PRODUCING OR ABANDONED GAS FIELDS
KENTUCKY GEOLOGICAL SURVEY
UNIVERSITY OF KENTUCKY
SERIES XI, 1983
ILLINOIS
INDIANA
OHIO
WEST VIRGINIA
VIRGINIA
TENNESSEE
MISSOURI

1/8; the remaining 7/8 attributed to working interests. Some portion of these tax revenues could be affected by the regulation and principally in select eastern and south-central Kentucky counties. No attempt was made to determine the potential loss in property tax revenues.

TABLE 4A. OIL PROPERTY VALUATION ASSESSMENT (1983)
MAJOR PRODUCING COUNTIES

County*	Total Assessment (Millions $)	SHARE OF REVENUES PER $100 ASSESSED VALUE State @ .221	County @ .1897	City @ .2444	School @ .2217	Total
Henderson	$45.4	$100,359	$86,145	$110,985	$100,677	$398,166
Union	15.3	33,844	29,051	37,428	33,952	134,275
Muhlenberg	18.3	40,566	34,821	44,861	40,695	160,943
Lee	16.7	36,981	31,743	40,897	37,098	146,719
Clinton	7.5	16,672	14,311	18,437	16,725	66,145
Daviess	13.6	30,169	25,896	33,363	30,264	119,692
Webster	11.6	25,764	22,115	28,492	25,845	102,216
McLean	11.0	24,427	20,967	27,013	24,504	96,911
Ohio	7.9	17,498	15,020	19,351	17,554	69,423
Hopkins	13.7	30,332	26,036	33,543	30,428	120,339
Adair	5.6	12,539	10,763	13,857	12,579	49,748
Cumberland	8.7	19,380	16,635	21,432	19,441	76,888
Magoffin	8.1	18,118	15,552	20,037	18,176	71,883
Letcher	4.3	9,505	8,159	10,512	9,535	37,711
Perry	6.0	13,409	11,510	14,829	13,452	52,840
Lawrence	3.7	8,331	7,151	9,213	8,357	33,052
Christian	4.3	9,646	8,280	10,668	9,677	38,271
Estill	3.9	8,722	7,487	9,646	8,750	34,605
Powell	3.2	7,254	6,227	8,022	7,277	28,780
Warren	5.2	11,550	9,914	12,773	11,586	45,823
All other counties	30.2	66,775	57,317	73,843	66,985	265,280
TOTAL	$245.1	$541,841	$465,100	$599,212	$543,557	$2,149,710

*Counties reporting production of oil to the Kentucky Department of Revenue for property tax purposes.

TABLE 4B. NATURAL GAS PROPERTY VALUATION ASSESSMENT (1983)
COUNTIES DERIVING GREATER THAN $10,000 INCOME

County*	Total Assessment (Millions $)	SHARE OF REVENUES PER $100 ASSESSED VALUE State @ .221	County @ .1897	City @ .2444	School @ .2217	Total
Pike	$32.7	$72,424	$62,166	$80,092	$72,653	$287,335
Floyd	44.3	98,076	84,186	108,461	98,387	389,110
Knott	31.9	70,700	60,687	78,186	70,924	280,497
Leslie	23.0	50,864	43,660	56,249	51,025	201,798
Martin	4.3	9,625	8,262	10,644	9,656	38,187
Perry	19.4	42,886	36,810	47,427	43,022	170,145
Letcher	6.9	15,405	13,223	17,036	15,543	61,117
Hopkins	3.2	7,254	6,226	8,021	7,276	28,777
Grayson	6.8	15,123	12,981	16,724	15,170	59,998
Breathitt	1.4	3,096	2,658	3,424	3,106	12,284
Muhlenberg	2.1	4,821	4,138	5,331	4,836	19,126
Christian	1.9	4,288	3,680	4,741	4,301	17,010
McLean	1.1	2,590	2,223	2,865	2,599	10,277
TOTAL	$179.0	$397,152	$340,900	$439,201	$398,408	$1,575,661

*Counties reporting income derived from natural gas to the Kentucky Department of Revenue for property tax purposes.

General Public and Other Entities

Savings to entities affected primarily relate to maintaining community water supplies, viable fishing resources, water-based recreation, and Kentucky's unique and exceptional outstanding resource waters.

- Drinking Water Criteria:

The maintenance of community water supplies derived from surface sources has already been mentioned in Section 1. 316 million gallons per day are withdrawn from Kentucky surface waters for rural self-supplied or public water use. Approximately 2.7 million Kentuckians will benefit from maintaining water supplies vital for domestic use. Maintenance of those water supplies is also vital for agricultural, power, and industrial uses, and for the sustained economic growth and development of the Commonwealth.

Based on total 1980 surface water withdrawals exceeding 1 billion gallons per day, stream and hydro electric power generation, representing 97.5 percent of the total, is by far the largest water consumer in the state. Agricultural and industrial uses are also fairly significant water consumers, withdrawing 42 and 190 million gallons per day, respectively. Obviously the quality and quantity of surface waters is a significant factor in the continued viability of Kentucky agriculture. 88 percent of agricultural withdrawals were for livestock watering purposes. The remaining portion was devoted to irrigated crop production. Likewise, the quality of water is crucial to Kentucky's food and beverage processing industry. It is also a concern in other commercial, manufacturing, and industrial purposes.

- Aquatic Life and Recreation Water Quality Criteria:

The water quality program of Kentucky among other things, is integral to maintaining and expending viable fishery resources and water-based recreational opportunities. Basically, the program establishes minimum instream water quality criteria that must be maintained to protect aquatic life and the health and safety of recreational users. In this manner, viable fishing resources and other forms of water-based recreation can be maintained to support Kentucky's growing fishing and tourism industry.

The value individuals place on leisure and recreation opportunities manifests itself in time, and tangible expenses for transportation, lodging and subsistence, equipment, and other fees. Total expenditures associated with Kentucky's tourism industry in 1983 amounted to $2.3 billion of which $1.36 billion were direct expenditures. Additionally, 101,708 individuals were employed in tourism related activities or supporting enterprises. State and local taxes accruing from recreational activities in 1983 amounted to $126.9 million and $30.7 million respectively (personal communication with Tourism Cabinet).

In Kentucky's major recreational lake regions, the Western Lakes and Lake Cumberland Regions, the Tourism Cabinet reported that direct expenditures amounted to $122.6 million and $66.7 million, respectively. Employment in these regions attributed directly to recreation amounted to 10,596 jobs. The counties of Marshall, McCracken, Russell, and Pulaski benefit the greatest from the tourism dollar in the lake regions.

The above figures represent total tourism expenditures in the state whether water-related or not. Figures provided for the lake regions, however, are principally water oriented.

To further illustrate the importance of Kentucky's fishery resource, 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 a per-sportsman expenditure of approximately $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.

Tangible expenses for other activities such as water skiing, boating, and canoeing are unknown at the present. In the absence of this more concrete measure of value, however, an examination of the time spent in 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 water-based recreation such as lost wages and salaries.

As background information, the 1978 Statewide Comprehensive Outdoor Recreation Plan (SCORP) projected facility deficits through 1995 for virtually all water-based recreation activities. Largely attributed to a difference in methodology, the draft 1984 SCORP shows no deficits in water-based recreation opportunities on a statewide basis with the exception of hunting (some portion of hunting category includes waterfowl). In fact, the draft 1984 SCORP shows a surplus in facilities for canoeing, boating, fishing and water skiing.

Nevertheless, using the participation rates determined through the planning process of the draft 1984 SCORP, there exists a significant demand for fishing, water-skiing, boating and canoeing on a statewide basis. On average, both rural and urban Kentuckians will spend nearly four days per year fishing, two and one-half days per year boating, eight-tenths of a day per year water skiing, and one-quarter of a day per year canoeing. When multiplied by the resident population of the state (3.7 million), this cumulatively equals 27.1 million visitor-days per year. Broken down, 14.5 million visitor-days per year will be spent fishing; 8.8 million visitor-days per year boating; 3.0 million visitor-days per year water skiing; and 841,000 visitor-days per year spent canoeing.

Although this analysis does not attempt to precisely measure 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 easily represent hundreds of millions of dollars in wages and salaries that individuals are willing to forego for water-based recreation opportunities.

This, of course, is a simplification of reality as 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 subsistences 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. Unfortunately, this information is not available. However, Kentuckians obviously place significant value on the easy access to and quality of water-based recreation activities provided by the state. They also expect that their health and safety will be safeguarded while participating in these activities.

- Outstanding Resource Water Criteria:

Regarding outstanding resource water criteria and resulting benefits, aesthetics and the 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.

No attempt is made here to estimate the worth and value of protecting threatened and endangered species to the Commonwealth or the nation. Suffice it to say that it is a national goal to protect species of fish, wildlife, and plants which are threatened or endangered 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.

Tangible expenses associated with Kentucky's eight Wild Rivers are unknown at present. Again, the time spent on the activity is an indication of their worth and value. If past user rates are indicative, there exists a significant demand for primitive recreation experiences such as canoeing, fishing, hunting, hiking, and camping along Kentucky's relatively undisturbed Wild River corridors. Table 5 summarizes present demand versus estimated carrying capacity for various recreation activities at five of the eight rivers. 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.

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.

In summary, past data indicates that from 20,740 to 21,195 visitor-days were recorded for canoeing; 30,2400 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, but 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.

TABLE 5: ESTIMATED USE RATES AND CARRYING CAPACITY FOR SELECT KENTUCKY WILD RIVERS (VISITOR-DAYS)

	Canoeing User Rates	Carrying Capacity
Little South Fork	NR	6,636
Cumberland River[1]	16,500	21,565
Rockcastle River[2]	960-1,415	16,512
Red River[3]	3,280	5,040
Rock Creek[4]	NR	NR
TOTALS	20,740-21,195	

	Fishing User Rates	Carrying Capacity
Little South Fork	NR	11,115
Cumberland River[1]	16,400	30,602
Rockcastle River[2]	3,300-10,934	992
Red River[3]	2,440	10,700
Rock Creek[4]	8,100	14,108
TOTALS	30,240-37,874	

	Hunting User Rates	Carrying Capacity
Little South Fork	NR	357
Cumberland River[1]	20,100	865
Rockcastle River[2]	1,200-6,624	1,336
Red River[3]	3,620	375
Rock Creek[4]	7,800	1,708
TOTALS	32,720-38,144	

	Hiking User Rates	Carrying Capacity
Little South Fork	NR	20,657
Cumberland River[1]	10,500	140,286
Rockcastle River[2]	606	9,460-47,300
Red River[3]	19,540	29,200
Rock Creek[4]	4,600	42,924
TOTALS	35,246	

Camping

	User Rates	Carrying Capacity
Little South Fork Cumberland River[1]	NR	NR
	11,600	69,350
Rockcastle River[2]	4,400	8,600
Red River[3]	59,500	7,300
Rock Creek[4]	9,900	6,800
TOTALS	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)

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 streams, rivers, and lakes in the Commonwealth 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.

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): None determined.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation specifies legitimate stream uses 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) enforcement process leading to 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 regulations 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 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: Changes in this regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection Cabinet. Again, the regulation states minimum criteria for protecting legitimate stream uses, providing the basis for permitting, compliance monitoring, and enforcement actions where necessary.

(3) Assessment of anticipated effect on state and local revenues: Over the long run, compliance with this regulation will increase the revenue outlays of state and local government for necessary wastewater treatment. Again, however, the distinction being made here is that these costs are not new costs resulting from this regulation and entities affected are aware of these continuing, long-standing facility compliance requirements. No substantial changes are being proposed which would raise revenue outlays in the short-run.

The proposed criteria for chloride, however, will have a negative impact on the revenue receipts. Counties and the state who receive revenues in the form of severance payments from the production of oil and gas could see a decline in these revenues. The RIA for regulation 4012 KAR 5:090 indicated that under the worst case a $650,000 severance tax revenue loss would result. Under the least impact case, $248,000 in severance tax revenue would be lost.

The major oil producing counties are expected to be impacted. These include the counties of Henderson, Union, Lee, Muhlenberg, Clinton, Daviess, Webster, McLean, Ohio, Hopkins, Adair, Cumberland, Magoffin, Letcher, Perry, Lawrence and Johnson. The greatest impact is expected to occur in the eastern and south central Kentucky counties of Clinton, Magoffin, Letcher, Perry, Lawrence, Cumberland and Johnson.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Several alternatives were considered but rejected when revising the proposed water quality standards regulation. One commenter suggested that cadmium, arsenic, and bromide be added to the contaminant list for the domestic water supply classification. The warmwater aquatic habitat criteria contain arsenic and cadmium limits which meet or nearly meet the levels protective for domestic water supply. These criteria would apply to waters used for domestic water supply and thus be protective of human health. No maximum contaminant levels have been developed for bromides in drinking water. Until this is

done, bromides cannot be added to the list.

One other commenter suggested that streams with naturally occurring flows of less than one cubic foot per second (cfs) be exempted from water quality standards and that the standards not apply to streams when the flow is less than the seven-day, ten-year low flow. No blanket exemption of streams with low flows of one cfs or less than the seven-day, ten-year low flow is contemplated. Flows may be considered under site-specific criteria development. Discharges are not considered to be in violation of stream standards are not considered to be in violation of stream standards when natural waters have characteristics outside of the limits established by the standards and the discharge is meeting permit limits.

Other suggestions have been incorporated into the revised regulation. Additionally, certain minor changes were necessary to clarify existing requirements and practices of the state and regulated community.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations, or government policies were determined to be in conflict with this regulation. Several changes were made to harmonize the regulation with recent changes in federal regulations and those of Kentucky's neighboring states in regard to managing the Ohio River.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

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

Tiering:

Was Tiering applied? No. Tiering was not applied since the regulation affects all entities required to treat wastewater irrespective of facility ownership, capacity, or unit processes or treatment employed.

APPENDIX A

Cost Estimate for Disposal by Dilution

1. Assume:
   (a) A 10 well field producing 100 barrels of water per day;
   (b) A lagoon for primary holding already exists;
   (c) A stream with adequate receiving capacity is within 1/2 mile of the lagoon;
   (d) The TDS of the produced water averages about 100,000 ppm; and
   (e) The dilution level is 300/1 to 500/1.
2. Equipment Requirements:

Aeration equipment	$ 2,000
Sand/gravel filter	5,000
Two pumps	2,000
1/2 mile of 2" polyethylene pipe	3,000
Valves	200
Distributor for stream injection	300
Estimated cost	$12,500

5 year straight line depreciation = $2,500/yr.

3. Operating cost:

Electricity - 150 Kwh/day	$12/day
Chemicals	5/day
Labor (part time)	10/day
Maintenance	1/day
Estimated cost	$28/day

4. Total cost:

Operating cost	$28/day
Capital cost ($2,500/yr.)	7/day
Total cost	$35/day

$35/day divided by 100 barrels/day = $.35/barrel.

SOURCE: RIA prepared for 401 KAR 5:090, February 1983.

Cost Estimate for Reserve Osmosis

1. At 25°C a 3.5% (35,000 ppm) salt solution (typical of sea water) has an osmotic pressure of 28 atmospheres or 435 psig.
2. Assuming 100,000 ppm (10%) is a typical oil well brine, the osmotic pressure at this brine is 90 atmospheres or 1350 psig.
3. At 35% (350,000 ppm) the osmotic pressure is 385 atmospheres or 5775 psig. This concentration is approaching saturation.
4. Pressures required to effect reverse osmosis, must be in excess of the osmotic pressures, e.g., over 1350 psig for a 10% solution. As concentration is increased in the brine by reverse osmosis, the required pressure will increase. To achieve a 50% volume reduction will require pressures of at least 3000 psig. A 1966 example of a mgpd reverse osmosis sea water plant shows the following:

Feed TDS	350,000 ppm
Recovered water stream	250 ppm
Reject brine stream	52,500 ppm
Percent water recovery	33%
Membrane life	0.5 year
Operating pressure	750 psig

Plant capital cost (1966 dollars)
$1,407,000
Water cost/100 gal. (1966 dollars)
$0.91

Regardless of capital and operating costs, the brine has been reduced by one-third, and the problem has not been solved. Even at saturation (if that were possible by reverse osmosis), operating pressures of 6000 psig would be required and the oil brine would be reduced by only 75% (100 barrels reduced to 25 barrels).

SOURCE: RIA prepared for 401 KAR 5:090, February 1983.

Cost Estimate for Heat Evaporation

1. Assume 1000 barrels/day formation water with a 10% salt content:
   1000 barrels/day = 350,000 pounds/day of brine or at 10%, 350,000 pounds = 315,000 pounds of water and 35,000 pounds of salt.
2. Assume spray drying in conical towers, direct fired natural gas unit operating at 80% efficiency, and salt collection in conical bottoms. The heat required to evaporate the water associated with 1000 barrels of brine/day is:

60°F to 212°F	152 Btu
212°F (liquid) to 212°F	970 Btu

Steam at 250°F 16 Btu
Equipment and product losses 250 Btu
Total 1,388 Btu/pound brine
1000 barrels/day = 315,000 pounds of water
315,000 pounds of water x 1,388 Btu/pound = 440 x 10^6 Btu/1000 barrels.

3. Cost/1000 barrels (energy only):
Natural gas cost = $6.59/mcf or $6.59/1,000,000 Btu
440 x 10^6 Btu x $6.59/$10^6$ Btu = $2,900/1,000 barrels = $2.90/barrel brine

4. Sale of salt (3¢/pound):
35,000 pounds/1000 barrels x $0.03 = $1,050

5. Total energy cost $2,900
Less salt value -1,050
Net energy cost $1,850 = $1.85/barrel*

*Exclusive of other operating and capital costs; all costs considered, the total cost would approach $4 to $5 per barrel.

SOURCE: RIA prepared for 401 KAR 5:090, February 1983.

Cost Estimate for
Pipe-Line Handling of Formation Water

1. Surface runs (not buried)
(a) 6" PVC pipe @ $21.95/LF

10 mile run cost $1,158,960
15 mile run cost $1,738,440

(b) 4" PVC pipe @ $15.65/LF

10 mile run cost $826,320
15 mile run cost $1,239,480

(c) 6" Black steel pipe @ $45.25/LF

10 mile run cost $1,019,040
15 mile run cost $1,528,560

2. Buried pipe - 3' deep, 2' excavation
Excavation and backfree

For 4" x 6" pipes add to cost under (1):
a. $146,800 for 10 mile runs $2.76/LF
b. $216,800 for 15 mile runs $2.74/LF

3. Other Equipment for Pumping
(Flow rate 70 gpm up to 325 feet head)

Up to 5 two-horse power pumps (220 Volt 3-phase - Bell and Gosset, type 313T) are needed
Add another $20.00 for pumps and power

4. Operating Cost

Electrical Cost $14.40/d or 0.014¢/gal. H_2O or 0.6¢/brl. H_2O

Maintenance Cost
$22,000 per year

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Water Quality Standards
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
MEASURE'S PURPOSE: Specifies use classifications for warm and coldwater aquatic habitat, drinking water (at points of withdrawal), recreation, and outstanding resource waters as well as narrative and numerical criteria to protect and maintain these uses.
PROVISION/MECHANICS: Regulation specifies that warmwater aquatic habitat, coldwater aquatic habitat, primary contact recreation, secondary contact recreation, domestic drinking water (at points of withdrawal), and outstanding resource water use classifications shall be applied (where applicable) to certain streams of Kentucky. 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 beneficial uses of the subject waters.
FISCAL EXPLANATION: 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. In the long-run, many of the basins cannot assimilate the wastes associated with growth and development without a corresponding increase in the size and sophistication of wastewater operations and processes. 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.

Proposed criteria for chloride will have a significant affect on the oil and gas producing industry. As a consequence, revenues received by oil producing counties in the form of mineral severance tax payments may decrease. The RIA prepared for this regulation indicates that under the worst case situation a $650,000 severance tax loss would result. The intermediate and least cost cases indicated a $390,000 and $248,000 severance tax loss, respectively. As a percent of Kentucky's fiscal year 1983-84 budget, the estimated loss of severance tax would be as follows: high estimate, 0.028 percent; low estimate, 0.009 percent; intermediate estimate, 0.015 percent.

In addition to the mineral severance tax, imposition of the 600 mg/l chloride limit could lead to a similar decline in property tax revenues derived from oil and gas. These revenues are distributed to the state, counties, cities, and school districts. Property valuation assessments are made only on producing oil and gas facilities. Table 4A and 4B below indicate the property valuation assessment and the distribution of tax revenues for major oil and

gas producing counties. The royalty share of oil and gas property assessments is approximately 1/8; the remaining 7/8th attributed to working interests. Some portion of these tax revenues could be affected by the regulation and principally in select eastern and south-central Kentucky counties. No attempt was made to determine the potential loss in property tax revenues.

Major oil producing counties affected include Henderson, Union, Lee, Muhlenberg, Clinton, Daviess, Webster, McLean, Ohio, Hopkins, Adair, Cumberland, Magoffin, Letcher, Perry, Lawrence, and Johnson. The greatest impact is expected to occur in the eastern and south central Kentucky counties listed above.

PREPARER: Donald J. Challman

REGIONAL INTEGRATED WASTE TREATMENT AND DISPOSAL FACILITY SITING BOARD (Amended After Hearing)

410 KAR 1:010. Application process.

RELATES TO: KRS 224.2201, 224.2203, 224.2207, 224.2209, 224.2211, 224.2213, 224.2215, 224.855, 224.862, 224.864, 224.866

PURSUANT TO: KRS 224.2205

NECESSITY AND FUNCTION: KRS 224.2205 requires the Regional Integrated Waste Treatment and Disposal Facility Siting Board to adopt regulations establishing a fee or schedule of fees for the cost of processing applications for certificates of environmental safety and public necessity and prescribing the manner in which the board shall process applications. This regulation establishes the process by which the board shall receive and review applications for certificates of environmental safety and public necessity.

Section 1. Applicability. This regulation applies to any person who requires a certificate of environmental safety and public necessity to construct or operate a regional integrated waste treatment and disposal demonstration facility as defined in KRS 224.2201.

Section 2. Application requirements. The application for a certificate of environmental safety and public necessity shall consist of the following:

(1) A copy of the complete permit application for a hazardous waste site or facility submitted to the Natural Resources and Environmental Protection Cabinet. The application must be accompanied by a copy of the notice of intent to issue a construction permit from the Natural Resources and Environmental Protection Cabinet. Where information requested in this section is already provided in the permit application, a notation should be included to that effect.

(2) A description of the waste material to be managed at the proposed facility including, but not limited to:

(a) A description of the types of materials that are anticipated to be received at the facility and the primary market area from which the materials will originate;

(b) A description of the anticipated transportation methods to be used including highway, rail, water and air; and

(c) A description of the anticipated route(s) including primary and secondary roads, by which waste is anticipated to be transported.

(3) A statement which demonstrates and documents each of the following:

(a) The facility will receive wastes from a region larger than the county boundaries within which it is proposed and from more than one (1) person.

(b) The facility will utilize multiple treatment and disposal methods including a secure landfill and a high technology incinerator.

(c) The facility will be designed to promote resource recovery and energy generation from hazardous waste.

(d) The facility will be designed to promote the use of state-of-the-art techniques for rendering waste non-hazardous and for disposing of waste in a manner that minimizes the risk to public health and long-term environmental impacts.

(e) The facility will contain an industrial park component. Property contiguous to the facility must be reasonably available for its development or the site must be of sufficient size to accommodate new industrial and commercial concerns. Contracts, leases or other documentation must be submitted as proof of availability of land for an industrial park.

(f) Any grant, contract, agreement, sale of state property or other form of assistance to the facility provided by the Commonwealth in accordance with KRS 224.896.

(4) A statement of social and economic impacts to the affected community including, but not limited to:

(a) The population density on the site and within five-tenths (0.5) miles of the facility. This is to be determined by multiplying the average persons per household for the county(ies) within this five-tenths (0.5) mile zone, by the number of residential structures indicated on maps. In addition the applicant shall provide population data for the county(ies) using the latest U.S. Census Bureau projections; the percentage change from the previous census projection; an estimate of the county population for twenty (20) years into the future; and the percentage change from the current population and the distance to and population of any cities within ten (10) miles.

(b) The proximity to structures including airports, schools, hospitals, churches, commercial centers, nursing homes, prisons, other sensitive populated structures, and cemeteries.

(c) An identification of the proposed project's conpatibility with local development plans and ordinances.

(d) An identification of lands designated for industrial use contiguous to the proposed facility and within the county. In addition, the applicant shall provide an assessment of the proposed facility's proximity to utilities.

(e) An emergency response plan to include:

1. A statement of the availability of emergency services including an estimated response time for police, fire, ambulance and other necessary safety services.

2. An emergency warning system to alert residents within five-tenths (0.5) mile of the proposed site and transportation routes of any sudden releases of hazardous wastes.

3. An evacuation plan to be followed in the

event of any sudden release of hazardous waste or other emergencies.

(f) An assessment of the population within five-tenths (0.5) miles of the transportation route including the number of dwelling units, schools, hospitals and shopping centers. A transportation route is defined as the highway route(s) between the site entrance and rail yard, or dock facility, or primary interstate or limited access interchange(s) used by site-bound motor carriers to deliver wastes to the site. The applicant shall identify the length of the transportation route(s); any transportation restrictions such as weight restrictions or bridge height restrictions; accident rate of the transportation route(s); and the potential adverse impact on the adjacent population and transportation structure due to the nature and volume of waste traffic.

(g) An identification of lands dedicated in public trust including publicly owned lands within two (2) miles of the proposed facility and an assessment of the impact the proposed facility will have upon these lands. Publicly owned lands shall include the following facilities owned and maintained or formally designated for acquisition by agencies of the federal, state or local government (including multi-county or multi-state agencies):

1. Wilderness or scenic areas;
2. Wildlife or bird sanctuaries;
3. Archaeological sites;
4. Game lands;
5. National, state or local parks, and recreation areas;
6. Historic sites and landmarks; and
7. Other natural areas.

(h) A comparison of public revenue to public expenditures associated with the facility explaining whether public revenues would be anticipated to be greater than or less than public expenditures and justification for the conclusions.

(i) An assessment of the proposed facility's impact on property values, including:

1. The effect on property values considering established trends of property values using historical data and the projected effect of the proposed facility on those established trends; and

2. The overall economic effect upon the community and adjoining areas considering new employment to be provided at the proposed facility, changes in the tax base, and the potential for industrial development.

(j) An assessment of existing alternatives to the technology of the proposed facility and a statement of justification for selection of the proposed technology.

(k) A statement of the resource recovery and energy generation benefits that may be available.

(l) An assessment of the direct economic benefits to the affected municipality(ies) and county(ies) including property taxes, gross tax potential, and employment opportunities, and potential community support services to be furnished by the applicant.

(m) An assessment of the proposed facility's impact on any state-owned commercial low-level nuclear waste disposal site.

(n) An assessment of the proposed facility's compatibility with the state hazardous waste management plan established under KRS 224.033(24).

(5) A statement of the environmental impacts to the area surrounding the proposed facility. In as much as the applications for a hazardous waste facility permit and an air emission permit submitted to the Natural Resources and Environmental Protection Cabinet may contain in part or whole the requirements of this subsection, the applicant may reference those applicable sections when submitting the application for a certificate of environmental safety and public necessity. However, the applicant shall submit such additional information as may be necessary to fulfill the requirements of this subsection to include information concerning:

(a) The geology of the proposed site including:

1. Rock type.
2. Rock attitude (i.e., degree of inclination).
3. Macro and micro structures.
4. Fractures and cleavage.
5. Weathering properties including resistance to and reactions with water, acid solutions or alkaline solutions, and freeze and thaw action.
6. Minerology.

(b) Groundwater at the proposed site including:

1. An assessment of potential flow through karst channels.
2. A characterization of the uppermost aquifers and aquitards at the proposed facility including:
   a. The extent and relative boundaries;
   b. The properties such as porosity, fracturing, and composition;
   c. The ion exchange capacity;
   d. The hydraulic conductivity;
   e. The hydraulic gradient;
   f. The hydrodynamic dispersion properties;
   g. The distance from the surface;
   h. The direction of groundwater flow;
   i. The velocity of groundwater flow;
   j. The quality and quantity of the acuifer;
   k. A characterization of recharge and discharge areas; and
   l. The potentiometric surface.
3. A charactization of current and potential water use hydraulically downgradient from the proposed facility including the current or potential use as a drinking water source, and an inventory of wells and springs within one (1) mile of the proposed site.
4. A characterization of the unsaturated zone including;
   a. The porosity of the soil and geologic formations overlying the acuifer(s);
   b. The hydraulic conductivity;
   c. The hydrodynamic dispersion properties of pollutants; and
   d. The soil cation exchange capacity.

(c) Surface water at the proposed site including:

1. An assessment of the potential for a 100-year flood event.
2. The stream flow data including minimum and maximum annual volumes.
3. The water quality.
4. The stream classification (i.e. perennial, intermittent, ephemeral).
5. The stream order.
6. The drainage basin area of the proposed facility both upstream and downstream.
7. The ground slope.

8. The standing water in lakes, ponds and swamps.
9. The relationship of surface water to karst features.
10. The official stream designation as:
a. Domestic water supply;
b. Primary contact;
c. Secondary contact;
d. Outstanding resource water;
e. Warm water aquatic habitat; or
f. Cold water aquatic habitat.
(d) The potential for ground failure at the proposed site due to:
1. Karst failure (i.e., sinkhole collapse).
2. Landslide.
3. Mine subsidence.
4. Seismic activity.
5. Streambank failure.
(e) The characteristic of the soil and other unconsolidated deposits which overlie bedrock at the proposed site including:
1. The soil classification including:
a. Depth to bedrock;
b. Texture and particle size;
c. Soil structure;
d. Soil consistency;
e. Minerology; and
f. Soil pH.
2. The physical characteristics including:
a. Porosity and permeability;
b. Sorption capacity;
c. Thickness in each horizon;
d. Moisture/density relationship (i.e., compaction capability); and
e. Ion exchange capacity.
(f) The mineral resources at the proposed site including:
1. Known or potential mineral deposits.
2. Mined-out areas both at the surface and underground.
3. Known or potential areas of oil and gas production or occurrence.
4. Identification of ownership of mineral rights.
(g) Air quality in the vicinity of the proposed site including:
1. Identification of ambient air quality.
2. A list of potential air pollutants that may be released by the proposed facility.
3. A map depicting the windrose to include prevailing windspeed and direction.
4. Identification of the location where the maximum groundlevel concentrations of air emissions released by the proposed facility occur:
a. Air emissions to include those listed in 401 KAR 53:010; and
b. Other emissions specified by the siting board.
5. An evaluation of the potential public health, safety and environmental aspects of air emissions released by the proposed facility.
(6) A statement regarding the experience and qualifications of the applicant. Experiences to be listed include ownership or operational responsibilities for any other hazardous waste storage, treatment or disposal facility. A list of personnel positions at the proposed facility, listing job responsibilities and minimal qualifications for each position identified, shall be provided.

Section 3. Application Submittal. (1) Application format. The applicant shall submit a complete application to the board which shall be in eight and one-half (8 1/2) inches by eleven (11) inches format and in the sequence identified in Section 2 of this regulation. All loose pages shall be bound in a folder, binder or similar device.
(2) Copies of the application. Twelve (12) complete copies of the application shall be submitted to the board. An additional copy shall be provided for the public to review. This copy shall be placed in a public location within the county where the facility is proposed to be located.
(3) Deadline for submittal. Within ninety (90) days of the date that the Natural Resources and Environmental Protection Cabinet notifies the applicant of its intent to issue a construction permit, the applicant must submit an application for a certificate of environmental safety and public necessity. The board may extend this deadline upon receiving written request and justification for the extension from the applicant.

Section 4. Application Process. (1) Public notice. Within ten (10) days of receipt of a complete application, the board shall publish a notice in a local newspaper within the county where the proposed facility is to be located and in all counties contiguous to the host county in conformance with KRS Chapter 424. This notice shall contain at a minimum the following information:
(a) The location of the proposed facility.
(b) The type of activity to be conducted at the proposed site.
(c) The name of the owners(s) of the proposed facility.
(d) The location within the county of an application available for public review.
(e) The location, date, and time of a public hearing on the proposed facility.
(f) The name(s) and address(es) of individuals to contact for additional information.
(2) Notice to the county judge/executive. Within ten (10) days of receipt of a complete application, the board shall notify the county judge/executive of the county in which the facility is proposed to be located of the application's receipt and the date on which the public hearing will be held.
(3) Public hearing. The board shall schedule a public hearing no less than thirty (30) days and no more than forty-five (45) days after publication of the notice described in subsection (1) of this section unless the applicant requests a delay. The public hearing shall be held in the county in which the facility is proposed to be located.
(4) Certificate of environmental safety and public necessity.
(a) The board shall make a decision whether to issue or deny the application within ninety (90) days of the public hearing. The board may extend the ninety (90) day period for an additional thirty (30) days with written notification to the applicant. If any additional complete applications for a certificate are received by the board during this review time, an additional ninety (90) day period will be automatically provided from the time that subsequent applications are received, to allow the board time to evaluate each of the

applications against the state's hazardous waste management needs, and to issue the certificate to that facility which is most consistent with the purposes and goals of KRS 224.2201 to 224.2215, 224.896, 224.987. In making the decision, the board shall consider:

1. The impact of the proposed facility on community perceptions.

2. The psychic costs of the proposed facility to the community.

3. The proximity of the proposed facility to existing and potential industrial locations within the state.

4. Whether the location of the proposed facility minimizes the transportation distances between major generators and the proposed facility.

5. The necessity of the proposed facility in relation to the waste generated within the state.

6. Whether the proposed facility minimizes the risk to public health and safety.

7. Whether the proposed facility minimizes the risks to the environment.

(b) Denial of a certificate. If the decision of the board is to deny the application, the applicant shall be sent, by certified mail return receipt requested, a notice of denial and a statement explaining the basis for the decision. The board will publish a notice in a local newspaper within the county where the proposed facility was to be located and in all counties contiguous to the host county stating that the application has been denied. The board shall immediately send written notice to the Natural Resources and Environmental Protection Cabinet of the decision to deny the application for a certificate.

(c) Issuance of a certificate.

1. If the preliminary decision is to issue a certificate of environmental safety and public necessity, the board shall notify the chairperson(s) of the interim joint committees of the Legislative Research Commission with jurisdiction in hazardous waste management or, if the General Assembly is in session, the chairperson(s) of the House and Senate standing committees with jurisdiction in hazardous waste management. The notification shall state the board's intent to issue a certificate of environmental safety and public necessity. Within thirty (30) days of the receipt of this notice, the chairperson(s) of the appropriate joint committee shall call a meeting of the committee to hear the findings of the board. Upon the close of this meeting, the board may choose to deny the application in accordance with paragraph (b) of this subsection or issue the certificate as specified in subparagraph 2 of this paragraph.

2. After presenting its findings to the appropriate joint committee, if the decision of the board is to issue a certificate, the board shall prepare a certificate of environmental safety and public necessity to be signed by the chairperson of the board. The board shall publish a notice in a local newspaper within the county where the proposed facility will be located and in all counties contiguous to the host county stating that a certificate has been issued and identifying appeals procedures. The board shall immediately send written notice of the issuance of a certificate to the Natural Resources and Environmental Protection Cabinet.

Section 5. Revocation or Suspension of Certificates. (1) The board may revoke or suspend a certificate of environmental safety and public necessity subject to such conditions as it deems appropriate consistent with KRS 224.2207 including, where appropriate provision for mitigation of local impacts. In addition, the board may revoke or suspend a certificate of environmental safety and public necessity for:

(a) Violations of permit conditions resulting in an adjudicated violation.

(b) Failure to commence construction of the facility as described within the certificate within one (1) year of the issuance of a certificate of environmental safety and public necessity.

(c) Failure to accept waste from more than one (1) county.

(d) Failure to provide access to the energy produced from the waste.

(e) Violations of conditions or mitigative requirements as required by the certificate of environmental safety and public necessity.

(f) Failure to submit all relevant facts or submittal of incorrect information on the application.

(2) Upon revocation of a certificate, the facility shall close in accordance with permit conditions unless the operation of the facility is modified so that it does not fall within the definition of a regional integrated waste treatment and disposal demonstration facility, in which case it shall be subject to the provisions of KRS 224.855(5).

Section 6. Appeals. Any person aggrieved by the decision of the board to issue or deny a certificate of environmental safety and public necessity, may take an appeal to the Franklin Circuit Court. The appeal must be made within thirty (30) days of the board's decision and shall be in accordance with KRS 224.2207(5).

JOHN BERRY, Chairperson
APPROVED BY AGENCY: March 13, 1985
FILED WITH LRC: March 13, 1985 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 3:355. Essential skills remediation.

RELATES TO: KRS 156.070, 158.750
PURSUANT TO: KRS 156.070
NECESSITY AND FUNCTION: KRS 158.750 broadly authorizes and funds a public school remedial instruction program; and KRS 156.070 authorizes the State Board of Education to prescribe courses of study, curricula, and programs as deemed necessary for the efficient management, control, and operation of the public schools. This regulation sets forth the criteria for the authorized public school remediation program, procedures for allotment of units, eligibility criteria for pupils to be served, qualifications and job descriptions for personnel, requirements for housing of units, and requirements for program evaluation.

Section 1. Definitions. (1) Transition classroom means a separate, self-contained,

full-time classroom staffed by a teacher who is trained to provide remedial instruction.

(2) Instructional assistant means a trained paraprofessional employee of the school district who provides **tutorial** [remedial] instruction under the supervision of a teacher.

(3) Remediation means a program of instruction designed to correct educational deficiencies.

(4) Mastery level means a determined level reflected by a score on an achievement test from which a pupil may be expected to progress without remedial assistance.

Section 2. Funding of Units. Funding of remedial units shall be as follows:

(1) For the 1985-86 school year, state funding for a transition classroom unit, to include only a teacher's salary allotment and current operating expense allotment, equal to the rank and experience and current expense allotment stipulated in the biennial budget for foundation program units, shall be made on the basis of one unit for each thirteen (13) pupils who at the end of kindergarten, first, or second grade in the 1984-85 school year achieve twenty-six (26) percent or more below the established mastery level in reading or reading and mathematics on the Kentucky Essential Skills Test (KEST). Classroom units shall be awarded on a fractional unit basis. **In school districts where fractional units result, local school districts may allocate average daily attendance funds received through the Minimum Foundation Program for those pupils eligible for transition classrooms in order to supplement the funding from the remedial program and create full scale transition classroom units.**

(2) For the 1985-86 school year, state funding for an instructional assistant unit, to include a salary allotment, [and legally mandated salary benefits] shall be reimbursed to local school districts based on actual expenses not to exceed $8,000 annually per instructional assistant unit and awarded on the basis of one (1) unit for each twenty (20) pupils who at the end of kindergarten, first, or second grade in the 1984-85 school year achieve ten (10) to twenty-five (25) percent below the established mastery level in reading and/or mathematics on the KEST. Instructional assistant units shall be awarded on a fractional unit basis.

(3) No single pupil shall be counted for purposes of generating both a transition classroom unit and instructional assistant unit.

(4) For each year after the 1985-86 school year, funding of transition classroom and instructional assistant units shall be on the basis of test scores of pupils during the year two (2) years preceding said year.

(5) If the amount appropriated in the biennial budget is insufficient to fund the number of transition classroom and instructional assistant units generated, the allotments to districts shall be adjusted on a pro-rata share basis of the units actually calculated to be needed, with first priority assigned to funding transition classroom units.

Section 3. Eligibility Criteria. Selection of pupils to be served in the remediation program shall be as follows:

(1) No more than fifteen (15) pupils **who score at the twenty-six (26) percent or more below mastery level in reading on the KEST** shall be enrolled in a transition classroom.

(a) If there are fewer than thirteen (13) **eligible** pupils identified for any such allocated unit [who score at the twenty-six (26) percent or more below mastery level in reading or reading and mathematics on the KEST], and to enhance the availability of remedial instruction for needy pupils, local school districts may group pupils according to the following priorities in order to create a transition classroom unit:

1. Pupils achieving twenty-six (26) percent or more below the established mastery on reading [or reading and mathematics];

2. Pupils achieving twenty-six (26) percent or more below mastery levels on mathematics only;

3. Pupils achieving from ten (10) to twenty-five (25) percent below mastery level on reading and/or mathematics;

4. Pupils achieving up to ten (10) percent below mastery in reading and/or mathematics;

5. Pupils with the greatest needs, as determined by KEST scores, shall be selected first. When pupils are grouped to create a transition classroom, fractional units shall continue to be allocated based upon the KEST scores of eligible pupils and not on the level of remediation to which the pupil is assigned. [In school districts where fractional units result, local school districts shall allocate average daily attendance funds received through the Minimum Foundation Program for those pupils eligible for either transition classrooms and/or instructional assistant units in order to supplement the funding from the remedial program and create full scale transition classroom and/or instructional assistant units.]

[(b) If there are pupils eligible for a transition classroom unit for whom a unit has not been allocated, these pupils may be provided remedial services in the regular classroom by an instructional assistant, provided that no funds under the program may be allocated for pupils assigned at a level of remediation that is below their needs based upon KEST scores.]

(b) [(c)] Pupils who remain at least twenty-six (26) percent or more below mastery of essential skills in reading or reading and mathematics after one (1) year of remedial instruction in a transition classroom, may be eligible for services in a transition classroom for an additional year. Decisions regarding continued service in a transition room and decisions on promotion or retention for individual pupils shall be based upon the KEST score as well as records of ongoing progress and teacher recommendations.

(2) No more than twenty-two (22) pupils who score between ten (10) and twenty-five (25) percent below mastery in reading and/or mathematics on the KEST shall be served by an instructional assistant.

(3) Pupils who score up to ten (10) percent below mastery in reading and/or mathematics on the KEST shall be provided remediation as needed by the regular classroom teacher.

(4) **School districts shall notify in writing the parents or guardians of any pupil selected for remediation of the intent to serve the pupil in the remediation program.** School districts shall have a written policy for screening pupils which includes criteria for including or

excluding individual pupils in the remediation program when documented evidence exists that such pupils' scores on the KEST do not reflect actual academic performance **or when children who have not been tested with the KEST enroll in the school district**. Under this provision, a pupil may be included in the program only with **written** parental consent. Such evidence shall be made available to the Kentucky Department of Education when requested. [With the exception of those pupils who are handicapped only by a speech impairment or a physical disability, pupils who have been appropriately identified as handicapped by an Admissions and Release Committee are not eligible to be served in the remediation program except upon a determination by the Admissions and Release Committee that there is no other appropriate educational placement for such a pupil.]

(5) **With the exception of those pupils who are handicapped only by a speech impairment or a physical handicap, as defined in 707 KAR 1:053, pupils who have been appropriately identified as handicapped by an admissions and release committee are not eligible to be served in the remediation program except upon a determination by the admissions and release committee that there is no other appropriate educational placement for such a pupil.** [School districts shall notify in writing the parents or guardians of any pupil selected for remediation of the intent to serve the pupil in the remediation program.]

Section 4. Program Operation. The remediation program shall include appropriate student learning activities and teaching techniques. The major emphasis of the remediation program shall be reading and mathematics. The level of intensity of remedial instruction shall be based upon the degree of need of the pupils served. The most intensive level of remedial instruction shall be provided in the transition classroom in the content areas of reading and mathematics. Content of other required curricula shall be taught with an emphasis on reading and mathematics. Pupils receiving remedial education shall participate equally in all school services provided for first and/or second grade pupils in such areas as art, music, physical education and extra curricular activities **in the same manner in which other pupils in the district receive such services**.

Section 5. Qualifications of Personnel and Job Descriptions. Personnel qualified to serve in the remediation program shall meet the requirements for the position and fulfill the job description as follows:

(1) Teacher:

(a) Requirements:

1. Hold valid elementary education teaching certification;

2. Have demonstrated ability to work with pupils who have not been successful in the regular classroom;

3. Have at least one (1) year prior experience as a classroom teacher **unless waived by the Superintendent of Public Instruction based upon documented evidence of lack of availability of personnel with such experience**; and

4. Participate in program training as specified by the Kentucky Department of Education **and local district**.

(b) Job description:

1. Implement instructional techniques and learning activities as required by the Kentucky Department of Education **and local district**;

2. Assess and document pupil progress on a continuous basis and modify instruction as necessary;

3. Maintain program records as required by the Kentucky Department of Education **and local district**;

4. Communicate with and involve parents; i.e., teacher/parent conferences, written communications, and home visits; and

5. Communicate with other teachers, instructional assistants and supervisors as necessary.

(2) Instructional Assistant:

(a) Requirements:

1. Hold minimum of high school diploma;

2. Demonstrate competent language skills;

3. Have demonstrated ability to work with pupils who have not been successful in the regular classroom; and

4. Participate in program training as specified by the Kentucky Department of Education **and local district**.

(b) Job description: Under the direction of the supervising teacher:

1. Implement instructional techniques and learning activities as required by the Kentucky Department of Education **and local district**;

2. **Provide tutorial** instruct**ion to** pupils individually or in small groups;

3. Assist with the documentation of pupil progress on a continuous basis;

4. Prepare and organize materials and equipment for remedial instruction; and

5. Participate as an integral member of the remediation instructional team.

Section 6. Facilities. (1) The remediation program shall be housed in facilities which are in compliance with 702 KAR 4:060, 702 KAR 4:070 and 702 KAR 4:080.

(2) In the event facilities are not available which meet the minimum square footage standards, the instructional area shall provide at least twenty-four (24) square feet of instructional space per pupil served or no less than 312 square feet.

Section 7. Program Evaluation. School districts shall evaluate the effectiveness of their remediation programs by collecting specified program data and submitting a report to the Kentucky Department of Education on a timely basis.

(1) The report shall include, but not be limited to:

(a) A list of names of pupils served.

(b) A summary of pupil progress on essential skills.

(c) Evidence of utilization of remediation materials and techniques.

(d) Evidence of parent involvement activities.

(e) Evidence of communication and coordination efforts within the schools.

(2) **An interim** [The] report shall be submitted to the Department of Education by December 15, 1985 and **a full report** by July 1 of each year thereafter.

(3) On-site monitoring of remediation programs shall occur in conjunction with state

evaluation for accreditation of schools.

Section 8. Alternative Remediation Program. School districts may elect to implement an alternative to the transition classroom for pupils who are otherwise eligible for a transition class. The alternative shall be established according to the collaborating teacher model.

(1) Funding shall be the same as for a transition classroom and the teacher shall have the same qualifications as a transition room teacher. School districts shall submit a report for the alternative model as required in Section 7 of this regulation. [There shall be a pilot program alternative to the essential skills remediation transition class. A selected sample of not more than twenty (20) school districts may participate. This program shall be developed, supervised, monitored and evaluated by the Department of Education. Its purposes shall be as follows:]

(2) The purpose of the collaborating teacher model shall be:

(a) To provide comparative data on differing approaches to remediation; and

(b) To provide [practical guidance to school districts in their efforts to provide] remediation in the regular classroom to pupils who have failed to master essential skills. [; and]

[(c) To provide practical guidance in the development of preventive approaches to essential skills remediation before transition classes become necessary.]

(3) In order to provide data for comparative purposes, districts desiring to implement a collaborating teacher program, which are funded for more than three (3) transition classrooms, must propose and operate the alternative remediation program and at least one (1) transition classroom.

(4) [(2)] The collaborating teacher [pilot program] shall function in the following manner [have the following characteristics]:

[(a) Pupils who would otherwise be eligible for transition classes shall receive remedial instruction in their regular classrooms.]

(a) The collaborating teacher shall provide direct instruction within the regular teachers' classrooms to eligible pupils. Instruction shall be focused on remediation of deficiencies of essential skills in the areas of reading and mathematics. Instruction shall be on an individual or small group basis, depending upon pupil functioning levels. [(b) The approach to be used shall be that generally referred to as the "consulting/collaborating teacher" model in which the collaborating teacher will work with regular classroom teachers to plan a remedial program for eligible pupils. Collaborating teachers shall have no administrative or school management resporsibilities.]

(b) [(c)] The collaborating teacher shall work with [and the] regular classroom teachers [shall work together] to develop an individual plan of remediation for each eligible pupil. [and] The collaborating teacher shall also be responsible for monitoring the academic progress of each pupil with regard to identified essential skills requiring remediation.

(c) The collaborating teacher shall cooperate with regular classroom teachers on planning, scheduling, and space requirements.

(d) The collaborating teacher shall have no administrative or school management responsibilities.

(5) [(3)] The collaborating teacher model [program approach] shall also contain the following components:

(a) Support for the regular classroom teachers in efforts to teach and motivate low achieving pupils;

(b) Involvement of parents through parent contracts and parent support groups [activities];

(c) Training in effective use [and training] of teacher aides and instructional assistance for pupil specific remediation;

(d) Incorporation of peer tutoring and team learning strategies;

(e) Tutoring [al work] and coaching in pupil self-management skills;

(f) Design of special homework assignment strategies;

(g) Development of cognitive and thinking skills, and problem solving;

(h) Incorporation of motivational techniques [strategies];

(i) Design of enrichment activities; and

(j) Participation in long-term staff development and team building strategies.

(6) [(4)] The Department of Education shall provide training, program materials and supervision to support the implementation of program components and shall assist [. Collaborating teachers shall be funded on the same basis as transition room teachers and shall meet the same qualifications as transition room teachers. Collaborating teachers shall cooperate with the Department of Education and submit a report as required in Section 7 of this regulation.] collaborating teachers [shall be assisted by the Department of Education] in developing a network for sharing program information.

(7) [(5)] School districts seeking to implement a collaborating teacher program [participate as pilot projects] shall follow procedures established by the Department of Education which shall include but not be limited to the following:

(a) Each district must submit a written request for program information and an application for participation.

(b) Each district must submit a proposal which shall identify the pupils to be served and the way in which the general requirements of the program will be specifically accomplished. The forms and format for representing this information shall be developed and supplied by the Department of Education. These forms will identify the specific criteria which will be used for deciding local district participation and the process by which these decisions shall be made.

[(c) In order to insure a proper sample for comparative purposes, districts desiring to participate as pilot districts which are funded for more than three (3) transition classrooms must propose and operate the alternative essential skills remediation program and transition classrooms for approximately equal numbers of pupils.]

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 8, 1985 at 1:30 p.m.

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

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 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 minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietitian" 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 dietitian 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 bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "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.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Induration" means a firm area in the skin which develops as a reaction to injected 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.

(11) "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.

(12) "Two-step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsiblity, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable); and

(k) Discharge and termination of services.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital 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.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the post-discharge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within fifteen (15) days of the patient's discharge.

(c) 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.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsbilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff

and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for pre-employment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. 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, **unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.** 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.

2. 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. **Employees whose initial skin test shows ten (10) or more millimeters of induration shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if persistent. Employees whose initial skin test shows ten (10) or more millimeters of induration who document that they have had a Mantoux skin test of less than ten (10) millimeters of induration within the two (2) year period prior to their current employment shall be considered as converters pursuant to the requirements of paragraph 5 of this subsection.**

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Prophylaxis of skin test converters. Any 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 one (1) year unless medically contraindicated as determined by a licensed physician. When isoniazid prophylaxis is not taken by such a converter, **the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays** [a chest x-ray shall be taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays].

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements. [All employees shall have a chest x-ray or tuberculin skin test prior to employment and annually thereafter.]

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, social security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physicial plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling, and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be current written infection control measures, including:

1. Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;

2. Written procedures for the bacteriological testing of all areas of possible infection.

Results of all testing shall be recorded and reported to the infection control committee;

3. The method of control used in relation to the sterilization of supplies and water; and

4. Policies for the protection of patients from employees who have a communicable disease.

(e) The hospital shall provide inservice education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(h) The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be incompliance with 401 KAR 59:020 and 401 KAR 61:010.

1. All unpreserved tissue specimens from surgical or necropsy procedures shall be incinerated, on site or off site.

2. The following waste shall be sterilized before disposal or be disposed of by incineration if they are conbustible:

a. Dressings and materials from open or contaminated wounds;

b. Waste materials and disposable linens from isolation rooms;

c. Culture plates;

d. Test tubes;

e. Sputum cups; and

f. Contaminated sponges and swabs.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the buildings; this air shall not be allowed to recirculate into the facility.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other resaon. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, pulse and respiration;

12. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

13. Discharge summary, including condition of patient on discharge, and date of discharge; and

14. In case of death, autopsy findings, if performed.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physican, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon

written or telephone orders of the attending medical staff member. When such restraint is necessary. the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage. handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital 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).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are

ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their inservice training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgury shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or desingated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficieny testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and dispostion of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for futher testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review commitee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be

maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and dispostion of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall ap-ply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the

provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical work-up in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a post-anesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The post-anesthetic follow-up note shall be written within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered before the infant is removed from the delivery room.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 7, 1985
FILED WITH LRC: March 8, 1985, at 10 a.m.

CABINET FOR HUMAN RESOURCES
Bureau for Health Services
(Amended After Hearing)

902 KAR 20:086. Operation and services; intermediate care facilities for the mentally retarded and developmentally disabled.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2), 222.210 et. seq.
PURSUANT TO: KRS [13.082,] 216B.040, 216B.105[(3)]
NECESSITY AND FUNCTION: KRS 216B.040 [and 216B.105(3)] mandates 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 and services of Intermediate Care Facilities for the Mentally Retarded/Developmentally Disabled (MR/DD).

Section 1. Scope of Operation and Services. Intermediate care facilities for mentally retarded and developmentally disabled persons provide services for all age groups on a twenty-four (24) hour basis, seven (7) days a week, in an establishment with permanent facilities including resident beds for persons whose mental or physical condition requires developmental nursing services along with a planned program of active treatment. The facility provides special programs as indicated by individual care plans to maximize the resident's mental, physical, and social development in accordance with the normalization principle. The Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled must comply with the facility specifications for Intermediate Care Facilities, 902 KAR 20:056.

Section 2. Definitions. (1) "Active treatment" means daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.
(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.
(4) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(5) "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.
(6) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene, and sex education while also meeting his physical and medical needs.
(7) "Facility" means an Intermediate Care Facility for the Mentally Retarded and the Developmentally Disabled (MR/DD).
(8) "Induration" means a firm area in the skin which develops as a reaction to injected 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.
(9) [(8)] "Interdisciplinary team" means the group of persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.
(10) [(9)] "License" means an authorization issued by the Board for the purpose of offering intermediate care MR/DD services.
(11) [(10)] "MR/DD" means the mentally retarded and the developmentally disabled persons.
(12) [(11)] "Normalization principle" is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturely normative as possible.
(13) [(12)] "Qualified dietitian 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 dietitian by ADA; or
(b) A person who has a masters degree in nutrition and is a member of the 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 dietitian.
(14) [(13)] "Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.
(15) [(14)] "Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate.
(16) [(15)] "Qualified social worker" means a person who is licensed or exempt from licensure

pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker.

(17) [(16)] "A qualified mental retardation professional" means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:

(a) A psychologist with a master's degree from an accredited program;

(b) A licensed physician;

(c) A educator with a degree in education from an accredited program;

(d) A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:

1. Social work from an accredited program; or

2. A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;

(e) A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.

(f) A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;

(g) A registered nurse;

(h) A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:

1. A bachelor's degree in recreation, or in a speciality area, such as art, music, or physical education; or

2. An associate degree in recreation and one (1) year of experience in recreation; or

3. A high school diploma, or an equivalency certificate; and

a. Two (2) years of experience in recreation; or

b. One (1) year of experience in recreation plus completion of comprehensive inservice training in recreation; or

4. Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or

(i) A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification.

(18) [(17)] "Restraint" means any chemical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

(19) [(18)] "Seclusion" means the retention of a resident alone in a locked room.

(20) "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.

(21) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(22) [(19)] "Time out" means a procedure which involves removing the person from a reinforcing situation, for a period of time when the person engages in a specified inappropriate behavior.

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 delegating such responsibility in his absence. The administrator shall not be the nursing services supervisor.

(3) Contracted Services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the residents. The contract shall be in writing.

(4) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological resident registry showing date of admission, name of resident 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 resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(5) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Services including medical, nursing, habilitation, 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 199.335;

(c) Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and

(d) Missing resident 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 resident is determined to be lost, unaccounted for or other unauthorized absence.

(6) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) Patients shall be admitted only upon the approval of a physican. The facility shall admit only persons who have a physical or mental condition which requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of a physician, a psychologist, a registered nurse, a social worker and other professionals, at least one of whom is a qualified mental retardation professional. The interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual, not more than three (3) months before admission, covering physical, emotional, social, and cognitive factors; and

2. Prior to admission define the need for service without regard to availability of those services. The team shall review all available and applicable programs of care, treatment, and training and record its findings.

(c) If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;

(d) Before admission, the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the facility and fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services offered; and

(e) The facility shall provide and maintain a system for identifying each resident's personal property and facilities for safekeeping of his declared valuables. Each resident's clothing and other property shall be reserved for his own use.

(8) Discharge planning. Prior to discharge the facility shall have a postinstitutional plan which identifies the residential setting and support services which would enable the resident to live in a less restrictive alternative to the current setting. Before a resident is released, the facility shall:

(a) Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;

(b) Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other followup services; and

(c) Prepare and place in the resident's record a summary of findings, progress, and plans.

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of health 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 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 resident, and shall establish responsibility for notifying the other institution promptly of the impending transfer of a resident and shall arrange for appropriate and safe transportation.

(b) When the resident's condition exceeds the scope of services of the facility, the resident, 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 resident 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 residents to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the resident, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any resident.

(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 resident.

(f) If the resident is transferred to another health care facility or other community resource, a transfer form shall accompany the resident. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with a history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for resident care, and pertinent social information on the resident and family.

(10) Medical Records.

(a) The facility shall maintain a record for each resident for:

1. Planning and continuous evaluation of the resident's habilitation program;

2. Furnishing documentary evidence of each resident's progress and response to his habilitation program; and

3. Protecting the rights of the residents, the facility and the staff.

(b) All entries in the resident's record shall be legible, dated and signed.

(c) At the time a resident is admitted, the facility must enter in the individual's record the following information:

1. Name, date of admission, birth date and place, citizenship status, martial status, and social security number;

2. Father's name and birthplace, mother's maiden name and birthplace, and parents' marital status;

3. Name and address of parents, legal guardian, and next of kin if needed;

4. Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

5. Reason for admission or referral problem;

6. Type and legal status of admission;

7. Legal competency status;

8. Language spoken or understood;

9. Sources of support, including social security, veterans' benefits, and insurance;

10. Religious affiliation, if any;

11. Reports of the preadmission evaluations; and

12. Reports of previous histories and evaluations, if any.

(d) Within one (1) month after the admission of each resident, the ICF/MR must enter the following in the resident's record:

1. A report of the review and updating of the preadmission evaluation;
2. A prognosis that can be used for programming and placement; and
3. A comprehensive evaluation and individual program plan, designed by an interdisciplinary team.

(e) The facility must enter the following information in a resident's record during his residence:
1. Reports of accidents, seizures, illnesses, and treatments for these conditions;
2. Records of immunizations;
3. Records of all time periods that restraints were used, with justification and authorization for each;
4. Reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident;
5. Observations of the resident's response to his program to enable evaluation of its effectiveness;
6. Records of significant behavior incidents;
7. Records of family visits and contacts;
8. Records of attendance and absences;
9. Correspondence pertaining to the resident;
10. Periodic updates of the information recorded at the time of admission; and
11. Appropriate authorizations and consent.

(f) The ICF/MR must enter a discharge summary in the resident's record at the time he is discharged.

(11) 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 inservice training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements. The facility shall have adequate personnel to meet the needs of the residents on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this regulation.

(d) The licensee shall have a qualified mental retardation professional who is responsible for:
1. Supervising the delivery of each resident's individual plan of care;
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the facility program;
4. Recording each resident's progress; and
5. Initiating a periodic review of each individual plan of care for necessary changes.

(e) Each resident living unit, regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:
1. For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);
2. For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and
3. For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).

(f) When 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.

(g) A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, or fire or other emergencies.

(h) Volunteers shall not be counted to make up minimum staffing requirements.

(i) 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 and experience in the field of developmental disabilities and mental retardation. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse preferably with a baccalaureate degree, at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:
1. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job description for each level of nursing personnel; and
2. Nursing service personnel at all levels of experience and competence shall be assigned responsibilities in accordance with their qualifications, delegate authority commensurate with their responsibility, and provide appropriate professional nursing supervision.
3. Participate in the development and implementation of resident care policies.

(j) The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

(k) 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.

(l) Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(m) 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. The facility shall comply with the following tuberculosis testing requirements:

1. 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, **unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment.** 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.

2. 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. **Employees whose initial skin test shows ten (10) or more millimeters of induration shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if persistent. Employees whose initial skin test shows ten (10) or more millimeters of induration who document that they have had a Mantoux skin test of less than ten (10) millimeters of induration within the two (2) year period prior to their current employment shall be considered as converters pursuant to the requirements of paragraph 5 of this subsection.**

3. The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with sections 1 and 2 of this section. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Prophylaxis of skin test converters. Any 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 one (1) year unless medically contraindicated as determined by a licensed physician. When isoniazid prophylaxis is not taken by such a converter, **the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and chest x-ray shall be taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays** [a chest x-ray shall be taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays].

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(n) The facility shall have a staff training program adequate for the size and nature of the facility with a person designated the responsibility for staff development and training. The program shall include:

1. Orientation for each new employee to acquaint him with the philosophy, organization, program, practices, and goals of the facility;

2. Inservice training for any employee who has not achieved the desired level of competence;

3. Continuing inservice training for all employees to update and improve their skills; and

4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services. (1) The professional interdisciplinary team shall assure that the health needs of the residents are met and that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:

(a) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.

(b) Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.

(c) Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care.

(2) Communicable Diseases.

(a) No resident shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(b) 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.

(3) Use of control and discipline of residents.

(a) The facility must have written policies

and procedures for the control and discipline of residents that are available in each living unit and to parents and guardians.

(b) The facility shall not allow:

1. Corporal punishment of a resident;

2. A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or

3. Seclusion of a resident.

(c) On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physicial restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment.

(d) The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use.

(e) An order for physical restraint may not be in effect longer than twelve (12) hours. Appropriately trained staff must check a resident placed in a physical restraint at least every thirty (30) minutes and keep a record of these checks. A resident who is in a physical restraint must be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint. Mechanical devices used for physical restraint must be designed and used in a way that causes the resident no physical injury and the least possible physical discomfort. Restraints that require lock and key shall not be used.

(f) Mechanical supports used as protective devices must be designed and applied under the supervision of a qualified professional, and in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(g) The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.

(h) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a qualified mental retardation professional;

2. Conducted only with the consent of the affected resident's parents or legal guardian; and

3. Described in written plans that are kept on file in the ICF/MR.

(i) A physical restraint used as a time-out device may be applied only during behavior modification exercises and only in the presence of the trainer.

(j) Time-out devices and aversive stimuli may not be used for longer than one (1) hour, and then only during the behavior modification program and only under the supervision of the trainer.

(4) Medical supervision of residents. The facility shall maintain policies and procedures to assure that each resident shall be under the medical supervision of a physician.

(a) The resident (or his guardian) shall be permitted his choice of physician.

(b) The physician shall visit the residents as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician.

(c) A complete medical evaluation to include social, physical, emotional, and cognitive factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission.

(d) Medical reevaluation at least annually shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care.

(e) Formal arrangements shall be made to provide for medical emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care.

(5) Health services. Health services shall include:

(a) The establishment of a nursing care plan as part of the total habilitation program for each resident. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals, and nursing care needs;

(b) Nursing care to achieve and maintain the highest degree of function, self-care and independence with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti.

2. Exercises. Nursing personnel shall assist residents in maintaining maximum range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control.

4. Training in habits of personal hygiene, family life, and sex education that includes but is not limited to family planning and venereal disease counseling.

5. Ambulation. Nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician.

6. Administration of medications and appropriate treatment.

7. Written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite recorded in the resident's record by licensed personnel.

(6) 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 pharmacist.

(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 residents 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. The pharmacist or nurse shall review the resident's medication profile on a regular basis. The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents 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 a registered nurse.

a. The nursing station shall have items required for the proper administration of medication readily available.

b. Medications prescribed for one resident shall not be administered to any other resident.

c. Self-administration of medications by residents shall not be permitted except for drugs on special order of the resident's physician and a predischarge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

d. Medication errors and drug reactions shall be immediately reported to the resident's physician and pharmacist and an entry thereof made in the resident'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 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. The medications of each resident 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 injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled sbustances shall be kept under double lock, (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the resident, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who administered it, or staff who supervised the self-adminstration. 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.

(7) Personal care services.

(a) Each resident shall be trained to be as independent as possible to achieve and maintain good personal hygiene including:

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 resident. 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 residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) Each resident who does not eliminate appropriately and independently must be in a regular, systematic toilet training program and a record must be kept of his progress in the program.

(c) A resident who is incontinent must be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program, and all soiled items must be changed.

(d) The staff shall train and when necessary assist the residents to dress in their own street clothing (unless otherwise indicated by the physician).

(8) Dental services.

(a) Comprehensive dental services shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.

1. Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids.

2. A dental professional shall participate, as appropriate on the interdisciplinary team serving the facility.

3.There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services delivered within the facility.

(b) Dental records shall be part of each resident's record.

(c) A dentist shall be responsible for insuring that direct care staff are instructed in the proper use of oral hygiene methods for residents.

(9) Social services.

(a) Social services shall be available either on staff or by formal arrangement with community resources for all residents and their families, including evaluation and counseling with referral to, and use of, other planning for community placement, discharge and follow up services rendered by or under the supervision of a social worker.

(b) The social worker of the intermediate care facility, providing services for the mentally retarded and developmentally disabled shall be under the supervision of a social worker who is a qualified mental retardation professional.

(c) Social services shall be integrated with other elements of the plan of care.

(d) A plan for such care shall be recorded in the resident's record and periodically evaluated in conjunction with resident's total plan of care.

(e) Social services records shall be maintained as an integral part of case record maintained on each resident.

(10) Recreation services. The facility shall coordinate recreational services with other services and programs provided to each resident and shall:

(a) Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs.

(b) Keep resident records that include periodic surveys of the residents' recreation interests and the extent and level of the residents' participation in the recreation program.

(c) Have enough qualified staff and support personnel available to carry out the various recreation services with the qualifications as defined in the definitions.

(11) Speech pathology and audiology services. The facility shall provide speech pathology and audiology services as needed to maximize the communication skills of residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team.

(12) Occupational therapy.

(a) Occupational therapy shall be provided by or under the supervision of a qualified occupational therapist to residents as required by the resident's needs.

(b) The occupational therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(13) Physical therapy.

(a) Physical therapy shall be provided by or under the supervision of a licensed physical therapist to residents as required by the resident's needs.

(b) The physical therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(14) Psychological services. Psychological services as needed shall be provided by a licensed or certified psychologist pursuant to KRS Chapter 319 who shall participate in the evaluation and periodic review, individual treatment, and consultation and training of program staff as a member of the interdisciplinary team.

(15) Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for residents who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting residents to and from the facility if necessary for the resident's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(16) Residential care services. All facilities shall provide residential care services to all residents including: room accommodations, housekeeping and maintenances services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, an such bed covering as is required to keep the resident comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. 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 facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chests or dressers with mirrors, a night light, and storage space for clothing and other possessions.

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.

6. Each living room or lounge area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

7. Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the residents.

8. Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.

(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 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 resident 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 residents or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Resident's personal clothing shall be laundered by the facility as often as necessary. Resident's personal clothing shall be laundered by the facility unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing may 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.

9. Maintenance. The premises shall be well kep 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 widewalks, 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 residents 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 dietitian on a full time, part time or consultant basis to the facility. The qualified dietitian shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting resident 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 dietitian or nutritionist, consultation by a qualified dietition 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 from 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 regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietitian shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through 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 residents. Adjustments shall be made when medically contraindicated.

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 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 the food served, nutritious 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 resident cannot be served in the dining room, trays shall be

provided and shall rest on firm supports. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

a. Correct positioning of the resident to receive his tray shall be the responsibility of the direct-care staff. Residents requiring help in eating shall be assisted according to their training plan.

b. Adaptive self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary.

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.]

Section 5. 902 KAR 20:085 and 902 KAR 20:085E, Special services for mentally retarded and developmentally disabled, are hereby repealed.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 8, 1985
FILED WITH LRC: March 8, 1985 at 10 a.m.

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:030. Employees.

RELATES TO: KRS 325.230, 325.240
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To repromulgate administrative regulations of the State Board of Accountancy of Kentucky.

Section 1. The secretary of the board shall keep the seal of the board, keep records of its proceedings and perform such other duties as may be prescribed by the board. The secretary, with the approval of the board, may arrange for assistance in the performance of its duties under a contract or contracts with an executive <u>director</u> [secretary], covering the maintenance of an office for the board and such other routine services as may be lawfully arranged for by the board to facilitate its administration of the Act.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:035. Application to take examination.

RELATES TO: KRS 325.265, 325.270
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation relates to the application for taking an examination.

Section 1. The completed application, including all information requested therein, must be filed with the office of the State Board of Accountancy, Louisville, Kentucky at least two (2) months prior to the first day of the month in which the examination is to be held. Thus, applications to sit for the May examination shall be filed with the board on or before the first day of March preceding; and applications to sit for the November examination

shall be filed with the board on or before the first day of September preceding. Except that in the case of candidates filing for re-examination because of forfeiture or expiration of application, such applications shall be filed with the board within thirty (30) days after the results of the next preceding examination have been published. In submitting the application to the board, the applicant shall:

(1) Submit the application on the form prescribed by the board, signed and acknowledged before a notary public;

(2) Enclose with the application two (2) photographs taken within ninety (90) days [two (2) years] preceding the application, the back of which is to bear the signature in ink of the applicant;

(3) Include with the application, evidence of educational qualifications and experience qualifications when required;

(4) The fee for the examination shall be $100 [seventy-five dollars ($75)] in the case of a new applicant. On re-examination the fee is twenty (20) dollars [fifteen dollars ($15)] each for Theory of Accounts, Auditing and Business Law and forty (40) dollars [thirty dollars ($30)] for Accounting Practice. Payment shall be made at the time requested by the board in the form of a check made payable to the "Kentucky State Board of Accountancy." Fees specified in this section shall become effective July 1, 1985.

Section 2. The act of filing an application for examination shall be deemed to be and shall constitute an agreement upon the part of the applicant that he will observe and conform to the requirements expressed in these rules, or such as may be promulgated hereafter.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Will increase the cost of the CPA exam by $25.00
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Will enable the board to offset an increase in the charge for preparation and grading of the exam.
2. Continuing costs or savings: See #1.
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No increase or decrease in existing 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:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:040. Examination; notice, procedure for conducting.

RELATES TO: KRS 325.270
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation relates to the procedure for conducting examinations.

Section 1. During the months of May and November the board will conduct an examination for qualified applicants whose applications have been approved by the board. The applicants accepted as candidates for examination will be notified in writing to the address stated in their application of the exact place of the examination, and the dates and hours at which each subject will be given.

Section 2. Candidates for examination shall be given a card bearing an [a] identification number [and the card shall be placed in a sealed envelope and handed to the examiners at the first examination]. The number is for identification only and shall be used on all papers submitted by the candidate. If any candidate shall sign his name or write his initials or other identification marks upon his examination papers, such action shall be considered as misconduct and shall be sufficient cause for rejecting his papers.

Section 3. Answers to examination questions, identified by the proper question number, must be submitted by the candidate on paper [stationery or forms] furnished by the board. The candidate shall clarify his answers by noting such number on each answer sheet and in no other manner.

Section 4. All answers must be turned in to the examiner in charge in the time allotted. The time allotted is stated on the examination questions booklet. All papers, stationery and supplies, except for the examination questions booklet furnished by the board, shall remain its

property and must be returned whether used or not. All examination papers shall be preserved for a period of one (1) year after each examination.

Section 5. Reference by a candidate during the examination to books or other matter, or exchange of information with other persons shall be considered misconduct sufficient to bar the candidate from further participation in that particular examination subject and to cause cancellation of all other papers submitted covering other subjects of that scheduled examination and suspension of the right to sit for subsequent examinations.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:045. Subjects of examination; grading; re-examination.

RELATES TO: KRS 325.265, 325.270
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to subjects of examination, grading and re-examination.

Section 1. Examinations will include questions or problems on the following subjects:
(1) Accounting practice;
(2) Theory of accounts;
(3) Auditing;
(4) Business law.

Section 2. The candidate will be required to make a grade of not less than seventy-five (75) [percent] in each subject before he will be declared to have passed the examination.

Section 3. A candidate who fails to receive a conditional credit or credits in any examination shall have the right to re-examination.

Section 4. A candidate who fails to pass all subjects but who receives a passing grade in two (2) or more subjects, or accounting practice alone, shall receive a conditional credit for such subject or subjects provided such candidate obtains a score of fifty (50) [percent] or more on the parts failed. This minimum grade requirement is waived if three (3) parts are passed at a single sitting.

Section 5. To add to conditioned status, the candidate must obtain a grade of seventy-five (75) or more in the parts passed and a grade of fifty (50) in all parts not passed. While a grade of less than fifty (50) prevents the candidate from adding to his conditional status, it alone does not remove or cancel conditioned status previously attained.

Section 6. A candidate who receives such conditional credit or credits must pass the remaining subjects within the six (6) examinations next succeeding the examination at which the first conditional credit was earned. An additional sitting(s) may be granted at the discretion of the State Board of Accountancy for good cause. In the event of the failure of a candidate thus to pass the examination within the above prescribed period, he will be considered to have failed the examination. Such a candidate may, however, thereafter make a new application, which shall be reviewed by the board as in the case of any new applicant.

Section 7. At any sitting, the candidate must sit for all parts for which he has not yet received a passing grade. The failure of a candidate to submit a paper in regard to any part of an examination will disqualify all papers submitted by that candidate at that examination unless the board, in its discretion, finds good cause not to disqualify the papers submitted.

Section 8. Any person licensed to practice law in this state need not be examined in the subject of business law. An applicant claiming waiver of the examination in business law by virtue of this section must include with his application a certification from the Kentucky State Bar Association to the effect that such candidate is duly licensed to practice law in this state and is in good standing as provided in KRS 30.170.

Section 9. A candidate for the certificate of Certified Public Accountant who has written the uniform examination under the jurisdiction of another state and has failed to receive a passing grade in all subjects, but has passed two (2) or more subjects, or accounting practice alone, may, in the discretion of the board, be given conditional credit for parts passed, provided that the applicant met all requirements of the Kentucky law and regulations, except for residence, at the time of writing the examination.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None
Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:050. Certificate application.

RELATES TO: KRS 325.261, 325.280
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to making application for certification.

Section 1. Persons who have met the qualifications set forth in KRS 325.261 may make application for a certificate as Certified Public Accountant and a permit to practice public accounting provided such application is filed within five (5) years after successful completion of the examination. Waiver of this five (5) year expiration period may be granted to individuals for good cause, upon application to the State Board of Accountancy. In submitting the application to the board, the applicant shall:
(1) Submit the application on the form prescribed by the board together with payment of the fee of twenty-five (25) dollars;
(2) Cause to be filed with the board three (3) letters from persons to whom the applicant is well known, two (2) of which must be from licensees of <u>the</u> [this] board. Each letter must state an opinion as to the moral character of the applicant and his fitness to practice as a certified public accountant. All letters shall be mailed by the writers to the State Board of Accountancy, Louisville;
(3) Include in <u>the</u> application the name and address of each person from whom letters are to be received in accordance with subsection (2) of this section. No applicant shall submit for reference the name of any person to whom he is related by either blood or marriage;
(4) Submit satisfactory evidence that the experience requirements have been met in accordance with 201 KAR 1:06<u>1</u> [0], unless such is already in possession of the board;
(5) Enclose with application one (1) photograph taken within <u>ninety (90) days</u> [two (2) years] preceding application, the back of which must bear the signature in ink of the applicant;
(6) Include with the application evidence of educational qualifications unless such is already in possession of the board;
(7) Submit satisfactory evidence of completion of an examination on professional ethics and other related questions as the board may deem appropriate.

Section 2. The act of filing an application for a certificate and permit to practice constitutes an agreement that the applicant will take the oath of a Kentucky Certified Public Accountant.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing

will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:065. Annual fees.

RELATES TO: KRS 325.330
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to the annual license fee.

Section 1. Each certified public accountant, <u>partnership or corporation</u> [who engages in practice] in Kentucky must secure a permit from the Board of Accountancy by paying an initial fee of fifty (50) dollars. Each such certified public accountant, each public accountant, each partnership, and each corporation registered with the board shall pay to the Board of Accountancy an annual renewal fee of fifty (50) dollars on or before July 1 of each year, for his or its permit to practice public accountancy in Kentucky during the twelve (12) month period beginning on that date.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:090. Practice by non-residents.

RELATES TO: KRS 325.390
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to practice by non-residents.

Section 1. Application for temporary permits as required by KRS 325.390(2) shall be submitted on a form as prescribed by the board. A resident of Kentucky may not obtain a permit to practice under this regulation.

Section 2. Included in the application shall

be a statement of the applicant, or if it is a partnership or corporation, by a partner or shareholder of the applicant(s) certifying that all engagements to be performed in Kentucky during the period for which the temporary permit is requested where obtained and shall be conducted in compliance with the rules of professional conduct promulgated by the board.

Section 3. Applicant shall also be required to state on the application in affidavit form that applicant is a member of a certified public accountant firm and include information on their current good standing to practice in their home state.

Section 4. The fee [for submitting an application] for a temporary permit shall be fifty (50) dollars.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:095. Code of ethics.

RELATES TO: KRS 325.340
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to the code of ethics.

Section 1. Rules of professional conduct governing the activities of all persons holding a permit to practice issued by this board shall be promulgated, incorporated herein by reference, as adopted and amended, and copies shall be furnished to any interested persons upon request.

JAMES T. AHLER, Executive Director
APPROVED BY AGENCY: January 25, 1985
FILED WITH LRC: March 4, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 26, 1985, at 10 a.m., EST, in the Administrative Offices of the Board located at 332 W. Broadway, Suite 310, Louisville, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 21, 1985, of their desire to appear and testify at the hearing: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James T. Ahler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(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:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050
PURSUANT TO: KRS [13.082,] 315.050, 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.050(1) to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This regulation is to assure that applicants for licensure are graduates of acceptable and approved colleges or schools.

Section 1. Every applicant for licensure as a pharmacist shall have graduated and received the first professional undergraduate degree from an accredited pharmacy degree program which has been approved by the Board of Pharmacy. Approved programs shall be those programs whose standards are at least equivalent to the minimum standards required from time to time by the American Council on Pharmaceutical Education for the accreditation of such programs. [All pharmacy schools and colleges approved by the American Council on Pharmaceutical Education are hereby approved by the Kentucky Board of Pharmacy.]

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: February 20, 1985
FILED WITH LRC: March 13, 1985 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 22, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 18, 1985, of their desire to appear and testify at the hearing: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected: All applicants for licensure, approximately 125 annually.
(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:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: None

Tiering:
Was tiering applied? No. All applicants treated the same.

GENERAL GOVERNMENT CABINET
Kentucky Board of Auctioneers
(Proposed Amendment)

201 KAR 3:005. Name required on advertising.

RELATES TO: KRS 330.100, 330.110(11)
PURSUANT TO: KRS Chapter 13A [13.082], 330.050(8)
NECESSITY AND FUNCTION: To protect the public and to require disclosures of the auctioneer conducting a sale.

Section 1. Any advertisements pertaining to a particular [an] auction sale must contain the name of the principal auctioneer and indicate that he is an auctioneer.

ALECK GRIBBINS, Chairman
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 30, 1985, at 10 a.m., in Room 343 of the Mall Office Center. Those interested in attending this hearing shall contact in writing at least 5 days prior to scheduled hearing: Barbara J. Schoen, Executive Secretary, Kentucky Board of Auctioneers, Mall Office Center, 400 Sherburn Lane, Room 343, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Schoen
(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. Tiering would not apply to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Board of Auctioneers
(Proposed Amendment)

201 KAR 3:015. Experience requirements for principal auctioneers.

RELATES TO: KRS 330.070(1)
PURSUANT TO: KRS Chapter 13A [13.082]
NECESSITY AND FUNCTION: To define the experience requirements for an apprentice auctioneer before he is eligible to take the examination to become a principal auctioneer.

Section 1. Upon application for a principal auctioneer's license, each apprentice auctioneer must present a statement [an affidavit] signed by his principal auctioneer [and himself] stating that said apprentice has participated as [a] bid caller in at least ten (10) [five (5)] auction sales during the twelve (12) months prior to submitting the application [course of his apprenticeship].

ALECK GRIBBINS, Chairman
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 30, 1985, at 10 a.m., in Room 343 of the Mall Office Center. Those interested in attending this hearing shall contact in writing at least 5 days prior to scheduled hearing: Barbara J. Schoen, Executive Secretary, Kentucky Board of Auctioneers, Mall Office Center, 400 Sherburn Lane, Room 343, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Schoen
(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. Tiering would not apply to this regulation.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:010. Administrator's duties.

RELATES TO: KRS 317A.030, 317A.040
PURSUANT TO: KRS 317A.040
NECESSITY AND FUNCTION: KRS 317A.040 requires the employment of an administrator to coordinate the examinations, inspections, and supervise the general office functions of the agency.

Section 1. The administrator shall serve as the board's liaison officer and coordinator in all administrative matters.

Section 2. The administrator shall have full powers to inspect any establishment licensed by this board or investigate any reported illegal practice [any premise reported as an illegal practice].

Section 3. The administrator shall have the power for and on behalf of the board to issue subpoenas for licenses, for the attendance of witnesses, and the production of such records, documents, and material as may be necessary in the conduct of board meetings.

Section 4. The administrator shall assist the members of the board in the giving and supervising of examinations.

Section 5. The administrator shall fill all merit positions from the merit register as required by the Department of Personnel statutes and rules and regulations. Any or all dismissals of employees shall be made by the majority decision of the board with notification to be made by the administrator. Any suspension or disciplinary action can be made by the appointing authority of the board.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled for April 22, 1985 at 10 a.m. at the office of the board, 314 West Second Street, Frankfort, Kentucky. Anyone interested in attending this meeting shall notify: Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:020. Examination.

RELATES TO: KRS 317A.010, 317A.020, 317A.050, 317A.100
PURSUANT TO: KRS 317A.050
NECESSITY AND FUNCTION: KRS 317A.050 requires all students of cosmetology to register with the board when enrolling in a school of cosmetology.

Section 1. No graduate of any school of cosmetology licensed by this board will be accepted for apprentice examination who has not registered with the board at least ten (10) months and two (2) weeks prior to said examination. No graduate manicurist will be accepted for examination who has not registered with the board at least thirty-seven and one-half (37 1/2) days prior to examination.

Section 2. Out-of-state graduates must submit a certification of hours from the state <u>in which the hours were obtained</u> [board where the hours were obtained].

Section 3. No student or apprentice cosmetologist will be permitted to take the board's examination whose application completed in full, has not reached the office of the board at least ten (10) working days prior to the beginning date of examination.

Section 4. The board's examination will be given only to students who have been notified to appear for the examination and who are wearing a clean, washable uniform and who have with them a pencil for their written examination and instruments to be used by them in the giving of practical examination.

Section 5. The examination shall consist of both a written test and practical demonstration in subjects from the curriculum as specified. The practical demonstration shall be performed on a live female model.

Section 6. (1) An average grade of seventy (70) percent in theory and practical will be required as a passing grade on the board's apprentice examination. No license will be issued to an applicant, not including instructors, with a grade below seventy (70) percent in any one subject and applicant must submit to re-examination on subjects not successfully completed.
(2) Instructor's license will not be issued to any applicant receiving a grade below eighty (80) percent of written and eighty-five (85) percent on practical. Applicant must submit to re-examination on subjects not successfully completed.

Section 7. A student who practices cosmetology in a beauty salon prior to the apprentice examination given by the board will be considered ineligible to take the examination pending hearing before the board.

Section 8. A bulletin board must be provided by a school and the examination schedule must be conspicuously displayed thereon at all times.

Section 9. Applicants successfully completing the state board examinations must buy their licenses within thirty (30) days following their examination. Failure to purchase said license will require the paying of the appropriate restoration fee as required by KRS 317A.050.

Section 10. The fee accompanying an application will not be refunded unless the application is rejected by the board.

Section 11. Any applicant who fails the state board examinations may be rescheduled for examination during any examination period provided all qualifications are met.

Section 12. Any applicant who fails any phase of the state board examination and waits over ninety (90) days to retake the examination must file another application.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:031. Replacement of license; duplicate license [Posting of license].

RELATES TO: KRS 317A.050
PURSUANT TO: KRS [13.082,] 317A.060
NECESSITY AND FUNCTION: Licenses must be posted to aid the board members and salon inspectors in conducting their inspections.

Section 1. In the event a license is lost, destroyed or stolen after issuance, a duplicate license shall be issued to the licensee. The licensee must file a statement verifying the loss of the license and each duplicate license shall be indicated "duplicate."

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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: None

Tiering:
Was tiering applied? No. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:040. Apprentices; ratio to operators.

RELATES TO: KRS 317A.030, 317A.060
PURSUANT TO: KRS 317A.050
NECESSITY AND FUNCTION: KRS 317A.050 requires an apprentice cosmetologist to work six (6) months under the supervision of a licensed cosmetologist.

Section 1. (1) Salons employing apprentice cosmetologists shall maintain the following ratio:
(a) Two (2) apprentice cosmetologists to one (1) cosmetologist.
(b) Three (3) apprentice cosmetologists to two (2) cosmetologists.
(c) Four (4) apprentice cosmetologists to three (3) cosmetologists.
(2) Any salon employing more than four (4) apprentice cosmetologists shall maintain an equal ratio of one (1) apprentice cosmetologist per cosmetologist.
[(2) Any salons employing more than four (4) apprentice cosmetologists shall maintain an equal ratio as follows:]
[(a) Five (5) apprentice cosmetologists to five (5) cosmetologists.]
[(b) Six (6) apprentice cosmetologists to six (6) cosmetologists.]
[(c) Seven (7) apprentice cosmetologists to seven (7) cosmetologists.]
[(d) Eight (8) apprentice cosmetologists to eight (8) cosmetologists.]
[(e) Nine (9) apprentice cosmetologists to nine (9) cosmetologists.]
[(f) Ten (10) apprentice cosmetologists to ten (10) cosmetologists.]
[(g) Eleven (11) apprentice cosmetologists to eleven (11) cosmetologists.]
[(h) Twelve (12) apprentice cosmetologists to twelve (12) cosmetologists.]
[(i) Thirteen (13) apprentice cosmetologists to thirteen (13) cosmetologists.]
[(j) Fourteen (14) apprentice cosmetologists to fourteen (14) cosmetologists.]
[(k) Fifteen (15) apprentice cosmetologists to

fifteen (15) cosmetologists.]
[(l) Sixteen (16) apprentice cosmetologists to sixteen (16) cosmetologists.]
[(m) Seventeen (17) apprentice cosmetologists to seventeen (17) cosmetologists.]
[(n) Eighteen (18) apprentice cosmetologists to eighteen (18) cosmetologists.]
[(o) Nineteen (19) apprentice cosmetologists to nineteen (19) cosmetologists.]
[(p) Twenty (20) apprentice cosmetologists to twenty (20) cosmetologists.]

Section 2. A licensed cosmetologist must be available for immediate supervision any time an apprentice cosmetologist provides any service relating to the practice of cosmetology.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.050, 317A.060
PURSUANT TO: KRS 317A.060
NECESSITY AND FUNCTION: Establishments licensed by this board require periodic inspections to insure compliance of the statutes and regulations of the board. Posting of the licensees' pictures with their licenses aids the inspector and board members in determining the validity of each license of the personnel.

Section 1. Any board member, the administrator and inspectors shall be allowed to enter any establishment licensed by this board or any place purported to be practicing cosmetology at any reasonable hour for the purpose of determining if the individuals are complying with the statutes and regulations of the board.

Section 2. Each licensee must attach his [their] picture to his [their] license and place same in a conspicuous area in the salon or school.

Section 3. Any salon closing for business but maintaining yearly license renewal shall be considered an inactive salon and shall remain same provided plumbing and equipment is not removed. Said salon shall be inspected periodically. Any salon removing equipment and plumbing shall be considered out of business and said license voided.

Section 4. All establishments licensed by this board shall be inspected a minimum of two (2) times per year.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:082. School's course of instruction.

RELATES TO: KRS 317A.060, 317A.090
PURSUANT TO: KRS 317A.050
NECESSITY AND FUNCTION: Schools must provide a course of instruction of 1,800 hours of student training. The curriculum prepares the individual for examination for the appropriate license.

Section 1. The regular courses of instruction for cosmetology students shall contain the following:
(1) Professional practices:
(a) The cosmetology profession:
1. Cosmetology vocabulary.
2. Brief history: how it began, and changes.
3. Ethics: ethics in a beauty salon; and salon conduct.
(b) Salon procedures:
1. Hygiene and good grooming: personal and public; personal characteristics; and responsibilities of the cosmetologists.
2. Professional attitudes and salesmanship; personality development; salesmanship and business management; customer relationship; and telephone personality.
3. Public relations and psychology: behavior; and proper image.
(c) Specialty services:
1. Facial treatments and make-up: facial treatment-make-up preparation; implements and supplies; procedure in giving a plain facial; purpose and effect of message movements; facial cosmetics; special problems; eyebrow arching; and lash and brow dye.
2. Manicuring: purpose and effect; preparation; equipment; and procedures, including the following: plain manicure, oil manicure, removal of stains, repair work, hand and arm message, buffing, application of lacquer, and application of artificial nails.
(2) Life sciences (general anatomy):
(a) Osteology: definition; and functions.
(b) Myology: definition; functions; and types.
(c) Neurology: definition; functions; types (motor and sensory); and principal nerves of the head, face and neck.
(d) Angiology: definition; composition of blood; and function of blood.
(e) Dermatology: structure of skin; functions of skin; appendages of skin; conditions of the skin; and lesions of the skin.
(f) Trichology: structure of hair; composition; blood and nerve supply; growth and regeneration; color, texture, elasticity, porosity; and conditions to be recognized.
(g) Nails: structure and composition; growth and regeneration; and irregularities.
(3) Physical sciences (chemistry and treatment):
(a) Chemistry:
1. Elements, compounds, and mixtures: properties of; acid and alkali; and chemistry of water.
2. Composition and uses of cosmetics: for the body; for the skin and face; and for the scalp and hair.
3. Chemistry of hair lightening.
4. Chemistry of hair coloring.
5. Chemical hair relaxing.
6. Chemistry of make-up.
7. Chemistry of facial treatments.
8. Chemistry of rinses: soaps and shampoos; and detergents.
9. Chemistry of cold waving.
(b) Scalp and hair treatments: purpose and effects; preparation and procedure; use of cap; electricity and therapeutic ray; and safety rules.
(c) Shampoos and rinses: importance of good shampoo; purpose of effects; required materials and implements; brushing and drying; types of shampoos; rinses (not colored); and composition.
(d) Hair coloring: principal reasons for coloring; advantages of coloring; classifications of hair coloring; variation of products; procedures; and safety measures.
(e) Hair lightening: types of lighteners; implements and supplies; procedure; special problems in hair lightening; fillers and toners; removal of aniline derivative tints; and tint back to natural coloring.
(f) Cold waving: basic requirements; scalp and hair analysis; hair porosity; hair texture; hair elasticity; hair density; curling rods and chemicals; variation of permanent wave products; procedures; problems; and safety measures.
(g) Sterilization and sanitation: definitions; importance; sterilization rules; and methods of sterilization.
(4) Hair designing or sculpturing:
(a) Hair shaping: fundamentals of hair shaping; correct use of tools; designing and planning the hair cut; sectioning and thinning; razor and shear shaping; wig shaping; and safety precautions.
(b) Hair styling: finger waving; pin curls; hair partings; artistry hair styling; dressing of the coiffure; special consideration in hair styling; chemical hair relaxing and styling; facial types; and hair pressing and types of hot-iron curling.
(c) Care and styling of wigs: purpose; quality; types of wigs; ordering wigs; cleaning; shaping; tinting and color rinsing; setting; and safety precautions.

Section 2. Schools must teach the students of the various supplies and equipment used in the usual salon practices.

Section 3. Schools must have the following charts or visual aids available for students' use:
(1) Charts or visual aids showing anatomy of

muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles;
(2) Charts or visual aids showing anatomy of nails.

Section 4. All students shall receive not less than 1,800 hours in clinical class work and scientific lectures with 450 minimum lecture hours for science and theory and 1,305 minimum clinic and practice hours; and forty-five (45) hours of Kentucky statutes and regulations.

Section 5. One (1) hour per week should be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and the rules and regulations of the board.

Section 6. [7.] No school of cosmetology shall be granted a license to operate a school of cosmetology or annual renewal of license unless the following curriculum is maintained and taught.
(1) Curriculum for freshmen students:
(a) Theory and related theory class, 100 hours:
1. General theory, including Kentucky cosmetology law and rules and regulations adopted thereunder.
2. Clinical theory.
3. Lecturing theory.
(b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours:
1. Cold waves.
2. Facials and make-up.
3. Complete "S" formations or complete fingerwaves.
4. Pincurl technique.
5. Hairshaping.
6. Hairstyling techniques.
7. Lash and brow tint.
8. Eyebrow arches.
9. Manicuring.
10. Scalp treatments.
11. Shampooing.
12. Hair coloring, bleaching, and rinsing (mixing and formulas).
13. Heat permanent.
14. Safety measures.
(2) Curriculum for junior and senior students.
(a) Theory and related theory class, 500 hours.
(b) Professional practices, life sciences (general anatomy), physical sciences (chemistry and treatment), hair designing safety measures, Kentucky cosmetology laws and rules and regulations adopted thereunder.
(c) Clinical class, 1,000 hours:
1. Hair conditioning treatments.
2. Scalp treatments.
3. Hairshaping.
4. Shampoos.
5. Cold waves.
6. Chemical hair relaxing (permanent wave).
7. Complete "S" formation and complete fingerwaves.
8. Pincurl techniques.
9. Hairstyles.
10. Iron curling.
11. Hair coloring and toning.
12. Bleaches and frostings.
13. Facials and make-up.
14. Manicuring.
15. Lash and brow tints.
16. Eyebrow arches.
17. Color rinses (certified color).
18. Wiggery.
19. Professional ethics and good grooming.
20. Salesmanship.
21. Reception desk and telephone answering.
22. Recordkeeping.
23. Dispensary (procedures for ordering supplies and retail merchandise).
24. Personality development.
25. Salon management.
26. Public relations.

Section 7. [8.] In addition to the regular course of instruction, cosmetology schools are permitted to have one (1) related lecture and demonstration per month.

Section 8. [9.] Any time not utilized in theory or clinic work must be used for study periods or library work.

Section 9. [10.] Each school shall furnish reference books for students' use. Any recognized textbook relevant to the art of science of cosmetology and educational to the student is acceptable to the board.

Section 10. [11.] Students of cosmetology shall not be permitted to work on the public until they have completed 300 hours of instruction.

Section 11. [12.] Students of cosmetology will be allowed eight (8) hours per day for two (2) out-of-school activities per 1,800 hours pertaining to the profession of cosmetology if reported to the board office on a standard form supplied by the board.

Section 12. [13.] Students of cosmetology will be permitted to attend two (2) educational programs within their 1,800-hour course for eight (8) hours credit per day, if reported to the board office on a standard form supplied by the board.

Section 13. [14.] Copies of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and regulations shall be made available to all students.

Section 14. [15.] Manicurist curriculum shall include the following:
(1) Science and theory; 100 hours.
(a) Equipment, sterilization, sanitation, public and personal hygiene safety measures, Kentucky cosmetology law and all rules and regulations adopted thereunder.
(b) Nail condition and manicure techniques.
(c) Hand and arm message.
(d) Science pertaining to areas of hands and arms.
(e) Personality, grooming, salon management, professional ethics, and cosmetic theory laws.
(2) Clinical; 200 hours:
(a) Oil and plain manicure.
(b) Nail polish changes, moons, half-moons, and tips.
(c) Hand and arm message.
(d) Safety measures.
(e) Care of equipment.
(f) Removal of stains.
(g) Repair work.
(h) Buffing.

(i) Application of lacquer.
(j) Application of artificial nails.

Section 15. [16.] The course of study and curriculum for an apprentice instructor shall include as minimums, with a total of 1,000 hours, the following:
(1) Orientation, fifteen (15) hours.
(2) Psychology of student training, fifty (50) hours.
(3) Introduction to teaching, thirty (30) hours.
(4) Good grooming and personality development, fifty (50) hours.
(5) Course outlining and development, forty (40) hours.
(6) Lesson planning, forty-five (45) hours.
(7) Teaching techniques (methods), eighty (80) hours.
(8) Teaching aids, audio-visual techniques, eight (80) hours.
(9) Demonstration techniques, fifty-five (55) hours.
(10) Examinations and analysis, sixty (60) hours.
(11) Classroom management, forty-five (45) hours.
(12) Recordkeeping, twenty-five (25) hours.
(13) Teaching observation, sixty-five (65) hours.
(14) Teacher assistant, ninety (90) hours.
(15) Pupil teaching (practice teaching), 270 hours.

Section 16. [17.] All student instructors must be under the immediate supervision and instruction of a licensed instructor at all times during the school day. No student instructor shall ever assume any of the duties and responsibilities of a licensed supervising instructor.

Section 17. [18.] All records of apprentice instructors' hours earned shall be recorded on a standard form supplied by the board office on or before the tenth day of each month.

Section 18. [6.] When permission of this board is given a student to enroll in a school for a special brush-up course in any of the following subjects, said student will be required to have a course of training of the following number of hours in the course or courses he or she desires to take:
(1) Permanent waving, and all chemical control, 150 hours.
(2) Manicuring, hand and arm message, and bleach, 100 hours.
(3) All iron curls, 100 hours.
(4) Facials, 125 hours.
(5) Hair coloring and bleaching, 150 hours.
(6) Scalp message, 25 hours.
(7) Hair shaping, trimming, and thinning, 125 hours.
(8) Science, 100 hours.
(9) Hair dressing and styling, 150 hours.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:101. Equipment sanitation.

RELATES TO: KRS 317A.130
PURSUANT TO: KRS [13.082,] 317A.060
NECESSITY AND FUNCTION: Cosmetology schools and beauty salons must maintain standards of sanitation to protect the health and safety of the general public.

Section 1. All implements, tools and equipment must be cleaned and sterilized before using.

Section 2. No combs or brushes may be used on more than one (1) person without first cleaning and sterilizing.

Section 3. Individual towels, neckbands, or strips must be placed upon the patron's neck before putting on the neck cloth or cape.

Section 4. Clean towels or tissues must be placed on headrest of each facial chair before giving a facial.

Section 5. All instruments must be kept in a closed sterilizing container when not in use.

Section 6. All student kits must contain an approved method of sterilization and kept closed when not in use.

Section 7. All creams, lotions, tonics, shampoos, and other liquids must be kept covered when not in use.

Section 8. Covered containers must be supplied for disposal of waste.

Section 9. Floors, walls, furniture, and fixtures must be kept clean at all times.

Section 10. All bowls and basins must be kept clean at all times.

Section 11. All glass and other metallic electrodes must be [thoroughly] sterilized between patrons.

Section 12. No treatment of any kind may be given to any person known to have an infectious or contagious disease of any nature. No person having any infectious or contagious disease may operate or be permitted to remain in a beauty school.

Section 13. All creams must be removed from the container by a disposable spatula or sterile spoon and any unused cream remaining thereon may not be replaced in the container or used on any other person.

Section 14. Any comb, brush, implement, or other instruments that are dropped on the floor must be washed, disinfected and placed in a sterilizer.

Section 15. No combs, brushes, tweezers, shears, razor, or other implements may be kept in the pockets of the students or licensees.

Section 16. No towel may be used more than once without being laundered. The drying of towels on lines, radiators, or steam pipes for use on patrons is prohibited. Dipping used towels into a receptacle containing hot water and using the same on patrons is prohibited.

Section 17. Each licensed place of business shall provide an appropriate space in which to keep all linens sanitized.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 4, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled for April 22, 1985 at 10 a.m. at the office of the board, 314 West Second Street, Frankfort, Kentucky. Anyone interested in attending this meeting shall notify: Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:150. School records.

RELATES TO: KRS 317A.090
PURSUANT TO: KRS 317A.050
NECESSITY AND FUNCTION: Schools must keep records of students' attendance and progress.

Section 1. A daily record of the attendance of the enrollment, including full-time, and part-time students and apprentice instructors must be kept by the schools in such a manner as to be available to the employees of the state board or to the members of the state board at all times.

Section 2. Schools are required to keep daily records, approved and signed by the instructor, showing practical work and work performed on clinic patrons. Said records must be available to the employees of the state board or to the members of the state board at all times.

Section 3. A detailed record shall be kept of all enrollments, withdrawals and dismissals.

Section 4. All records must be kept in a lockable fire-proof file on the premises of the school and must be available for inspection by the state board or its employees during hours of operation.

Section 5. Notice of student withdrawals, [and] dismissals, and completion of 1800 hours, shall be forwarded to he office of the board along with the students' permits and certification of hours within ten (10) working days of date of withdrawal, [or] dismissal, or completion of 1800 hours.

Section 6. Cosmetology schools will be held

fully responsible for the completeness, accuracy, and mailing or delivery to the state board office no later than the 10th of each month on forms supplied by the board showing the total hours obtained for the previous month and the total accumulated hours to date for students enrolled. Only the hours recorded shall be submitted each month and such report shall not be amended without satisfactory proof of error.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: February 5, 1985
FILED WITH LRC: March 12, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled for April 22, 1985 at 10 a.m. at the office of the board, 314 West Second Street, Frankfort, Kentucky. Anyone interested in attending this meeting shall notify: Carroll Roberts, Administrator, Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: None
(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: 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: 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. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(6), 314.042, 314.131(1), 314.161
PURSUANT TO: KRS Chapter 13A [13.082], Chapter 314
NECESSITY AND FUNCTION: The Nurse Practice Act provides for the registration of advanced registered nurse practitioner. It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.

Section 1. Eligibility Requirements. [Eligibility for Registration as Advanced Registered Nurse Practitioner.] To be eligible for registration as advanced registered nurse practitioner, the applicant shall:
(1) Be currently licensed on an active status to practice as a registered nurse in Kentucky;
(2) Have completed an organized post-basic program of study and clinical experience acceptable to the board as defined in Section 2 of this regulation; "completed" shall mean that the applicant has completed all course requirements, including didactic, clinical and/or thesis components, and is eligible for receipt of a diploma or certificate as awarded by the school/program.
(3) Be currently/actively certified by one (1) of the following national organizations: American Nurses' Association as practitioner or clinical specialist, American College of Nurse Midwives as nurse midwife, Council on Certification/Recertification of Nurse Anesthetists (or their predecessor, American Association of Nurse Anesthetists) as nurse anesthetist, National Board of Pediatric Nurse Practitioners/Associates as practitioner, Nurses' Association of the American College of Obstetricians and Gynecologists as practitioner, or other national organizations [as] designated by the board as defined in Section 3 of this regulation [through amendment to this regulation and] in collaboration with the Nurse Practice Council;
(4) Accurately complete and submit application form and necessary information for registration as advanced registered nurse practitioner;
(5) Submit a recent photograph (two (2) x three (3) inches) taken within the past six (6) months with the photograph signed by the applicant on the front under the facial features. Snapshots are not acceptable.
(6) Submit the current application fee for advanced registered nurse practitioner registration.

Section 2. Program Requirements. To be acceptable to the board an organized post-basic program of study and clinical experience shall:
(1) Be an established, ongoing and organized program offered on a routine basis to enrollees.
(2) Be accredited/approved for the education of nurses by a recognized accreditation/approval body, or the sponsoring organization holds such accreditation/approval.
(3) Have a program design which prepares enrollees to function in a role consistent with the advanced registered nursing practice specialty designation.
(4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students.
(5) Have a designated faculty responsible for planning, development, implementation and evaluation of curriculum and students.
(6) Extend over an enrollment period of no less than nine (9) months.

(7) Include didactic components.
(8) Include a supervised clinical experience.
(9) Upon successful completion award a diploma or certificate.

Section 3. Recognition of a National Certifying Organization. A national certifying organization may be recognized by the board to grant certification to meet eligibility requirements for registration as advanced registered nursing practitioner when said organization or agency meets the following criteria:
(1) Certifying body is an established national nursing organization or a subdivision thereof.
(2) Full membership privileges are restricted to registered nurses.
(3) Eligibility requirements for certification are delineated.
(4) Valid and current registered nurse licensure is required for initial and continuing certification.
(5) Certification is offered in speciality areas of clinical practice.
(6) Scope and standards of practice statements are promulgated and include:
(a) Belief statement.
(b) Statement on scope of practice.
(c) Standards for specialty area clinical practice.
(d) Guidelines for development of practice protocols.
(e) Guidelines for the provision of comprehensive client care.
(7) Mechanism for determining continuing competency is established.
(8) Procedures are established for determining qualifications for initial or continuing certification for members having had disciplinary action taken on license by any jurisdiction.

Section 4. [5.] Applicant Pending Certification Examination Results. A nurse who meets the requirements of Section 1(1), (2), (4), (5), and (6) of this regulation and who is eligible for and has applied for initial certification by one (1) of the national organizations specified in Section 1(3) of this regulation may be authorized by the board to practice under the supervision of a certified advanced registered nurse practitioner of the same specialty or a licensed physician until results of the certification examination have been received or for a period not to exceed one (1) year beyond the practice requirement for certification. To be eligible for authorization to practice under supervision the applicant shall:
(1) Submit evidence of verification of the required supervision.
(2) Submit evidence that he/she has applied to take and has met the eligibility requirements to take an initial examination to attain certification as required in Section 1(3) of this regulation.

Section 5. [2.] Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire/lapse [will be reviewed] at the time [of] the [renewal of the] registered nurse license expires/lapses.
(2) To be eligible for renewal of registration as advanced registered nurse practitioner, the applicant shall:
(a) Renew the registered nurse license on an active status.
(b) [(1)] Submit a completed application form for renewal of registration as advanced registered nurse practitioner;
(c) [(2)] Submit current renewal application fee;
(d) [(3)] Meet requirements in Section 1 [(1)] (3) of this regulation.
(3) [Section 7. (4)] An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status may not practice as or use the title of advanced registered nurse practitioner until a current active license has been issued by the board and the advanced registered nurse practitioner registration has been reinstated.

Section 6. [3.] Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by law and regulation, the registration shall lapse on the last day of the licensure period.
(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:
(a) Submit a completed application form;
(b) Submit current reinstatement application fee;
(c) Meet requirements in Section 1(1), (3) of this regulation.

Section 7. [6.] Certification/Recertification. (1) An advanced registered nurse practitioner who has met requirements and has applied for recertification by one (1) of the national organizations specified in Section 1(3) of this regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.
(2) [Section 7. (1)] A nurse who fails to attain certification from one (1) of the national organizations specified in Section 1(3) of this regulation will not be registered as an advanced registered nurse practitioner and may not practice or use the title of advanced registered nurse practitioner until the requirements of Section 1 of this regulation have been met.
(3) [(2)] An advanced registered nurse practitioner who fails to attain recertification as required by the appropriate national organization will be notified that his/her advanced registered nurse practitioner number is void and he/she may not practice as or use the title of advanced registered nurse practitioner until recertification has been achieved.
(4) [(3)] An advanced registered nurse practitioner who is decertified by the appropriate national organization shall notify the board of that fact and he/she shall not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. [4.] An application is valid for a period of one (1) year from date of submission to board. After one (1) year from date of application, the applicant shall:
(1) Submit new application;
(2) Submit current fee;

(3) Meet requirements as stated in Section 1(1) through (3) of this regulation.

Section 9. [8.] The requirements of this regulation do not prohibit the supervised practice of nurses enrolled in post-basic educational programs for preparation in advanced registered nursing practice.

Section 10. [9.] Any registered nurse who holds himself out as a clinical specialist or is known as such, is required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures according to an established protocol as defined in 201 KAR 20:057(2); such a nurse whose practice does not include the performance of procedures beyond the scope of registered nursing practice shall not be included under the requirements of this regulation.

[Section 10. No nurse shall practice as an advanced registered nurse practitioner or use any words or letters to indicate the nurse is an advanced registered nurse practitioner unless registered by the Kentucky Board of Nursing.]

Section 11. Any nurse practicing as an advanced registered nurse practitioner who is not registered as such by the board or any advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he/she has been designated, shall be subject to the disciplinary procedures set in KRS 314.091.

SHARON M. WEISENBECK, Executive Director
APPROVED BY AGENCY: December 13, 1984
FILED WITH LRC: March 12, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 24, 1985 at 1:30 p.m. in Room 447 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by April 19, 1985: Bernadette M. Sutherland, Assistant Executive Director, Kentucky Board of Nursing, Suite 430, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck, Executive Director
(1) Type and number of entities affected: Approximately 150 registered nurses apply for registration each year. Approximately 600 registered nurses hold a registration as advanced registered nurse practitioners (ARNPs). Five national certifying organizations are currently recognized by the board.
(a) Direct and indirect costs or savings to those affected: The proposed regulation amendments will not change costs.
1. First year: No change
2. Continuing costs or savings: No change
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The proposed regulation amendments have no affect on existing reporting and paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None anticipated
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None known
(b) Reporting and paperwork requirements: No change
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative, to make no change, was assessed, and it was determined that existing policies and guidelines of the Board must be in regulation form. The revisions were necessary to insure that 1) adequate educational preparation and certification were achieved by applicants for registration as ARNPs, 2) qualified ARNP applicants were eligible to sit for an acceptable certification examination and were adequately supervised, and 3) registration requirements were clearly and accurately stated.
(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: Not applicable
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Tiering was applied in that qualified applicants for registration as ARNPs, who are pending certification examination results, may be authorized to practice under the supervision of a qualified person(s) after such applicants have submitted evidence of verification of supervision and evidence that the applicants are eligible to take the required certification examination. All other applicants must submit evidence of certification prior to registration as an ARNP.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.193(2)
PURSUANT TO: KRS 314.193(2)
NECESSITY AND FUNCTION: The Nurse Practice Act requires that standards in the performance of advanced registered nursing practice be established by regulation to safeguard the public health and welfare.

Section 1. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the scope of practice statements for each specialty area as developed by the national organizations recognized in 201 KAR 20:056 (American Nurses' Association, American Association of Nurse Anesthetists, American College of Nurse Midwives, National Board of Pediatric Nurse Practitioners/Associates, and Nurses' Association of the American College of

Obstetricians and Gynecologists) as adopted December 13, 1984, herein incorporated by reference, (said statements may be obtained from the national organizations) and as said standards and functions are adopted by the board of nursing pursuant to KRS 314.011(5)(e) and KRS 314.193(2). In adopting such standards and scopes of practice, the board of nursing may solicit the recommendations of the nurse practice council and other appropriate groups. The advanced registered nurse practitioner shall accept the responsibility, accountability and obligation to practice in accordance with the accepted standards of care as defined by the nursing profession and as stated in KRS 314.011(7).

Section 2. In the performance of advanced registered nursing practice acts [those procedures which are normally construed as the practice of medicine], the advanced registered nurse practitioner shall practice in accordance with [the standards of the medical practice act and] established [medical] protocol and shall seek consultation and/or referral in those situations where practice requirements are not included in the established [medical] protocol. The term "established [medical] protocol" shall mean a written document jointly approved by the physician and the advanced registered nurse practitioner delineating the [permissible] areas of practice for the advanced registered nurse practitioner. In delineating the [permissible] areas of practice in the [medical] protocol, the advanced registered nurse practitioner shall conform to the standards of practice of the appropriate national nursing organization applicable to such practice.

Section 3. Advanced registered nursing practice does not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

SHARON M. WEISENBECK, Executive Director
APPROVED BY AGENCY: December 13, 1984
FILED WITH LRC: March 12, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 24, 1985 at 1:30 p.m. in Room 447 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by April 19, 1985: Bernadette M. Sutherland, Assistant Executive Director, Kentucky Board of Nursing, Suite 430, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck, Executive Director
(1) Type and number of entities affected: This regulation amendment affects approximately 600 registered nurses who hold registration and designation as advanced registered nurse practitioners (ARNP).
(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:
(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: There will be no change in the amount of reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative, to make no change, was assessed, and the determination was made that due to the 1982 revisions of KRS Chapter 314.011(7) which defines advanced registered nursing practice, this revision is necessary to more clearly define the scopes and standards of such practice.
(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: Not applicable
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable
(6) Any additional information or comments: The current scope of practice statements, as incorporated by reference to this regulation amendment, do not change the impact analysis of this regulation.

Tiering:
Was tiering applied? No. The regulation establishes standards for all designations of advanced registered nurse practitioners, no attempt was made to tier the regulation because the practice of all designations is defined by KRS Chapter 314.011(7).

GENERAL GOVERNMENT CABINET
Kentucky State Board of Podiatry
(Proposed Amendment)

201 KAR 25:011. Approved schools; examination application, fees.

RELATES TO: KRS 311.420
PURSUANT TO: KRS 311.410(4)
NECESSITY AND FUNCTION: KRS 311.420 requires all persons engaging in the practice of podiatry in the state of Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. This regulation sets out the procedures to be followed in obtaining an application, the fees to be charged and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board recognizes the following schools or colleges of podiatry as having those standards and requirements adequate to comply with the provisions of KRS 311.420(1)(d). Those schools and colleges are as follows:
(a) California College of Podiatric Medicine, 1770 Eddy Street, San Francisco, California 94115.

(b) Dr. William M. Scholl College of Podiatric Medicine, 1001 N. Dearborn Street, Chicago, Illinois 60610.

(c) Pennsylvania College of Podiatric Medicine, Race and Eighth Streets, Philadelphia, Pennsylvania 19107.

(d) New York College of Podiatric Medicine, 53 East 124th Street, New York, New York 10035.

(e) Ohio College of Podiatric Medicine, 10515 Carnegie Avenue, Cleveland, Ohio 44106.

(2) The board will evaluate the academic standards of schools and colleges of podiatry desiring to be approved by the board following receipt by the board of applications for approval from said schools or colleges.

Section 2. All applications for examination mentioned herein shall be submitted on application forms prescribed and provided by the board, accompanied by such evidence, statements, or documents as therein required, and shall be filed with the board at its principal office within the times prescribed herein.

(1) Every applicant, eligible to take the examination pursuant to the provisions of KRS 311.420, must submit an application to the secretary of the board at least thirty (30) days prior to the date of the examination.

(2) The fee for the examination shall be the sum of $200 [$100] and must be paid at the time the application for examination is filed with the board. The sum shall be payable by certified check, cashier's check or postal money order.

(3) Any applicant who fails to attain a passing score as required by the board may apply to the board for re-examination by submitting another application to the secretary of the board at least thirty (30) days prior to the date of the next examination.

(4) If the applicant has failed to attain a score of at least seventy (70) percent in one (1) or two (2) of the subjects, but shall have attained an average of seventy-five (75) percent or better on the total examination, then he may only be re-examined on the subject or subjects in which he failed to attain a score of at least seventy (70) percent.

(5) The fee for re-examination in one (1) or two (2) subjects shall be twenty-five (25) dollars and the fee for re-examination for the total examination shall be fifty (50) dollars.

Section 3. The board shall not refund the examination fee except where good and sufficient cause for refunding all or a portion of the fees are shown to the board within a reasonable time prior to the date of the examination.

JOSEPH P. LEONE, D.P.M., President

APPROVED BY AGENCY: March 15, 1985

FILED WITH LRC: March 15, 1985 at 9:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 25, 1985, at 10 a.m. (EST) in Room 327 of the State Capitol. Those interest in attending this hearing shall contact: Kathryn A. Harmon, Regulations Compiler, Office of the Attorney General, Suite 16, State Capitol, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. C. A. Nava, 110 Hubbards Lane, Louisville, Kentucky 40203

(1) Type and number of entities affected:

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

1. First year: Kentucky State Board of Podiatry

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:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional requirement

(3) Assessment of anticipated effect on state and local revenues: State revenue should be increased by approximately $1,000 to $2,000 per year. There will be no effect on local revenue.

(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

GENERAL GOVERNMENT CABINET
Kentucky State Board of Podiatry
(Proposed Amendment)

201 KAR 25:021. Annual renewal notice for licenses, fees.

RELATES TO: KRS 311.450

PURSUANT TO: KRS 311.410(4)

NECESSITY AND FUNCTION: KRS 311.450 requires the board to send notices to all podiatrists licensed by this board to their last know address on or before June 1 of each year. This regulation requires the mailing of an annual renewal notice to all licensed podiatrists and requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. It further requires all licensed podiatrists to keep the board apprised of the current address of the licensee; establishes penalty for non-compliance.

Section 1. The State Board of Podiatry shall on or before June 1 of each year mail to each licensed podiatrist an annual renewal notice. This annual renewal notice must be completed and returned to the board on or before July 1 of each year. The annual renewal fee, in the amount of fifty (50) dollars [thirty-five (35) dollars] shall be attached to the completed renewal notice when it is returned to the board. Said annual renewal fee shall be paid by certified check, cashier's check or postal money order, payable to the State Board of Podiatry. All information requested on the annual renewal notice form shall be furnished to the board when

the completed annual renewal notice form is returned to the board.

Section 2. In addition, the licensed podiatrist shall return with the annual renewal notice form a statement showing his compliance with the continuing education requirements of the board.

Section 3. Failure to complete the requirements for annual renewal of the license by July 1 of the current year shall result in a penalty of fifty (50) dollars [forty (40) dollars].

JOSEPH P. LEONE, D.P.M., President
APPROVED BY AGENCY: March 15, 1985
FILED WITH LRC: March 15, 1985 at 9:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 25, 1985, at 10 a.m. (EST) in Room 327 of the State Capitol. Those interested in attending this hearing shall contact: Kathryn A. Harmon, Regulations Compiler, Office of the Attorney General, Suite 16, State Capitol, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. C. A. Nava, 110 Hubbards Lane, Louisville, Kentucky 40203
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Kentucky State Board of Podiatry
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:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirement
(3) Assessment of anticipated effect on state and local revenues: State revenue should be increased by approximately $1,000 to $2,000 per year. There will be no effect on local revenue.
(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

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] 224.320, 223.330, 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 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 as of March 1, 1985 [October 15, 1984], 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, Oxygen, 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 5D - Determination of Particulate Matter Emissions from Positive Pressure Fabric Filters.

j. [i.] Method 6 - Determination of Sulfur Dioxide Emissions from Stationary Sources.

k. [j.] Method 6A - Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources.

l. [k.] Method 6B - Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources.

m. [l.] Method 7 - Determination of Nitrogen Oxide Emissions from Stationary Sources.

n. [m.] Method 7A - Determination of Nitrogen Oxide Emissions from Stationary Sources -- Ion Chromatographic Method.

o. Method 7C Determination of Nitrogen Oxide Emissions from Stationary Sources -- Alkaline - Permanganate/Colorimetric Method.

p. Method 7D - Determination of Nitrogen Oxide Emissions from Stationary Sources -- Alkaline - Permanganate/Ion Chromatographic Method.

q. [n.] Method 8 - Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.

r. [o.] Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources.

s. [p.] Method 10 - Determination of Carbon Monoxide Emissions from Stationary Sources.

t. [q.] Method 11 - Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.

u. [r.] Method 12 - Determination of Inorganic Lead Emissions from Stationary Sources.

v. [s.] Method 13A - Determination of Total Fluoride Emissions from Stationary Sources - SPADNS Zirconium Lake Method.

w. [t.] Method 13B - Determination of Total Fluoride Emissions from Stationary Sources - Specific Ion Electrode Method.

x. [u.] Method 14 - Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.

y. [v.] Method 15 - Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.

z. [w.] Method 16 - Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

aa. [x.] Method 17 - Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).

bb. [y.] Method 18 - Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.

cc. [z.] Method 19 - Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

dd. [aa.] Method 20 - Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

ee. [bb.] Method 21 - Determination of Volatile Organic Compounds Leaks.

ff. [cc.] Method 22 - Visual Determination of Fugitive Emissions from Material Processing Sources.

gg. [dd.] Method 24 - Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

hh. [ee.] Method 24A - Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings.

ii. [ff.] Method 25 - Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

jj. [gg.] Method 25A - Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

kk. [hh.] Method 25B - Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.

ll. [ii.] 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.

3. Appendix C: Determination of Emission Rate Change.

(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. 20044; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate "Book of ASTM Standards" in which the standard appears 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) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(i) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(j) 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) D 1072-80 [56(75)] Standard [Test] Method for Total Sulfur in Fuel Gases.

(m) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(n) D 1475-60(80) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(o) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(p) D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(q) D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(r) D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(s) 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) 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 C_2 and Lighter Hydrocarbon Products by Gas Chromatography.

(x) 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) D 3031-81 Standard Test Method for Total Sulfur in Natural Gas by Hydrogenation.

(aa) [(z)] D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(bb) [(aa)] D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(cc) D 3246-81 Standard Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.

(dd) D 4084-82 Standard Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method).

(ee) [(bb)] E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(ff) [(cc)] E 168-67(77) Standard Recommended Practices for General Techniques of Infrared Quantitative Analysis.

(gg) [(dd)] E 169-63(81) Standard Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis.

(hh) [(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 Collection [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, Technical Services, Department for Environmental Protection, Fort Boone Plaza, 18 Reilly Road, 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.

Section 11. Availability. Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(1) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(3) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(7) Paducah Regional Office, 1300 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: March 12, 1985

FILED WITH LRC: March 14, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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

(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 and to add the locations where the referenced material is available for public inspection. 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 regulations on New Source Performance Standards (NSPS) which the division is adopting by reference. In addition, 40 CFR 60, Appendix C, is being added because it is incorporated by reference in 401 KAR 50:016.

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 for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:016. Policies incorporated by reference.

RELATES TO: KRS 13A.130, 224.320, 224.330, 224.340
PURSUANT TO: KRS 13A.210, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of the policies that are used by the Division of Air Pollution.

Section 1. (1) The following document from the Kentucky Division of Air Pollution is incorporated herein by reference: "Policy Manual of the Division of Air Pollution Control," March 15, 1985 ["Policies of the Division of Air Pollution," July 13, 1984].
(2) Copies of the document incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:
(a) Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;
(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;
(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;
(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;
(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and
(g) Paducah Regional Office, 1300 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8205. [may be obtained from: Division of Air Pollution, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.]
(3) This document contains the policies that are used by the Division of Air Pollution. Topics covered in each chapter are:
(a) Ambient air monitoring [for prevention of significant deterioration (PSD), post construction and compliance]. When ambient monitoring is required for PSD under 401 KAR 51:017, or for compliance demonstration under 401 KAR 50:050, this chapter contains specific guidance for a quality control program for automated analyzers, manual methods, gaseous standards and flow measurement devices; ambient monitoring guidelines for PSD including rationale, objectives, data representation and uses; and duration of monitoring, sampling methods and procedures, frequency of sampling, monitoring plan, meteorological parameters and measurement methods, network design and probe siting criteria, number and location of monitors for criteria and noncriteria pollutants, and quality assurance requirements.
(b) Interpretation of the PSD regulation, 401 KAR 51:017. This chapter contains the interpretation of significant contribution, best available control technology information for coal-fired power plants; and federal determinations of the applicability of the federal PSD regulation, in cases where the regulation is not specific, for use by the Division of Air Pollution in interpreting the applicability of 401 KAR 51:017. This chapter also contains the federal interpretation of applicability PSD regulation relative to start-up after temporary shut-down of affected facilities; a list of compounds which are not considered volatile organic compounds for the purpose of PSD; PSD baseline and netting determinations; and categorization of certain industries applicable to the PSD regulation. This chapter also contains guidelines for determining best available control technology.
(c) Volatile organic compounds (VOC) emissions. This chapter contains the interpretation of the VOC regulations relative to averaging time, compliance with emission limits, application of diluents and sealants, determination of transfer efficiencies of surface coatings, determination of capture efficiency and equivalency calculations and a method for quantifying condensable (particulate) organic compounds [, and EPA's policy on Kentucky's accommodative state implementation plan].
(d) New source performance standards (NSPS) applicability determination. This chapter is used by the Division of Air Pollution to determine applicability of the NSPS regulations of Title 401, Chapter 59 in the issuance of construction and operating permits. It also includes policies [an EPA document which the Division of Air Pollution shall use in

interpreting 401 KAR 59:005, Section 2(1), and guidance] on performance testing during soot-blowing at new and existing sources which will be used by the Division of Air Pollution in interpreting 401 KAR 50:045.

(e) Permitting [Application of proper permit fee base]. This chapter contains an interpretation of 401 KAR 50:036 as to the permit fee applicability to: [renewal of permits;] bubble, banking and trading transaction applications; sources subject to categorical compliance schedules; modified sources; and reactivated permit applications.

(f) Nonattainment areas. This chapter contains EPA's interpretation of the applicability of 40 CFR 52.24 relative to net increases, and the definition of potential to emit and will be used by the Division of Air Pollution in interpreting 401 KAR 51:052.

[(g) Applicability of emissions offset.] This chapter also contains a summary of federal emission offset determinations which the Division of Air Pollution applies in determining the applicability of 401 KAR 51:052.

(g) Source testing reports [(h) Requirements for contents of source testing reports]. This chapter outlines the contents of a source test protocol and the minimum requirements for the contents of an acceptable compliance test report as required by 401 KAR 50:045.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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

(1) Type and number of entities affected: Specific provisions of this regulation could affect any entity subject to current air pollution control regulations, namely, individuals, public or private corporations, political subdivisions, government agencies, municipalities, industries, or other entities whatsoever which own or operate facilities which emit or may emit any air contaminant into the outdoor atmosphere. Because of the diversity of topics this regulation covers, it is difficult to generalize the types and number of entities affected. Therefore, the type and number of entities affected by the policies in each chapter of the referenced policy manual will be addressed below. Many of the numbers are future projections which are based on past division experience.

Chapter 1. Ambient Air Monitoring. The policies contained in this section specify the general requirements for implementation of regulations 401 KAR 50:050 and 401 KAR 51:017, Section 12. These requirements include, among other details, distance of monitors from roadway, clearance of air intake from obstruction, frequency of calibration of monitoring equipment and the mechanics of an acceptable quality control program. The policies specify the format for submitting air quality data to the agency, so the agency can readily extract and interpret the results. The number and type of sources that are required by 401 KAR 51:017 (Prevention of Significant Deterioration) to conduct air quality monitoring will depend on future economic development in the Commonwealth. Judging by past experience, one or two sources per year may require preconstruction monitoring. The types of sources are outlined in detail in 401 KAR 51:017 (28 specific source categories which emit over 100 tons per year and other sources which emit over 250 tons per year of a regulated pollutant). Not all of these types of sources will be required to conduct monitoring because such a requirement would depend on the significant impact on the ambient air and whether or not existing air quality data can be accepted in lieu of conducting ambient monitoring. These policies specify the criteria for acceptable existing air quality data. Other sources which are not subject to the above requirements may be subject to 401 KAR 50:050. These are major sources that have the potential to violate ambient air quality standards, or those that chose to present evidence that the control measures employed are sufficient to protect the ambient air quality in their impact areas. Currently, four such sources are required to operate monitors and an additional two conduct monitoring voluntarily. This number is not expected to vary in the future, but those sources that conduct ambient monitoring must use the criteria outlined in the policy document for collecting and submitting air quality data. It is important to note that the type and number of affected entities are governed by other regulations and not by the policies referenced in this regulation.

Chapter 2. Prevention of Significant Deterioration. The Prevention of Significant Deterioration (PSD) regulation (401 KAR 51:017) is admittedly one of the most difficult regulations to understand and interpret. In the past several years the U.S. Environmental Protection Agency (EPA) received a vast number of inquiries as to the exact meaning of the provisions of this regulation. EPA had compiled a list of these inquiries and interpretations. Since this agency's regulation is based on EPA's regulation, and Kentucky has received delegation of authority to enforce the federal program on Kentucky sources, the interpretations are being adopted by reference to provide consistency and provide sources in Kentucky the same degree of stringency as other sources outside the Commonwealth. Basically, sources in the listed 28 categories which emit more than 100 tons of a regulated pollutant per year and other sources which emit more than 250 tons per year of a regulated pollutant, and propose to locate in clean areas or plan major modifications, are affected by 401 KAR 51:017. Some notable examples of the types of sources are: power plants and large boilers (over 250 mm Btu/hr heat input), coal cleaning plants (with thermal dryers), Kraft pulp mills, primary aluminum reduction plants, petroleum refineries, and major emitters of volatile organic compounds such as auto assembly plants and printing plants. The policies referenced in this

regulation confirm that certain plants are part of the 28 listed categories and exempt other plants from 401 KAR 51:017. Examples of those plants exempted include: beverage alcohol distilleries, iron foundries, aluminum rolling mills, plants which process prefabricated fiberglass products, coal loading or coal preparation facilities not located at coal cleaning plants, sandblasting operations and tar sand extraction plants. The policies confirm that ethanol fuel plants, pharmaceutical plants, kilns at charcoal production plants, coal conversion plants (gasification, and liquefaction) and others, are regulated categories. The above are examples of the types of entities that could be affected by these policies. The number of these sources will depend on the industrial and economic outlook of the Commonwealth. According to this agency's records, there are 28 sources that are subject to PSD rules. If past history is a reflection of future development, it is expected that no more than six sources per year would actually be affected, and perhaps two dozen sources would be exempted because of above mentioned interpretations or because of other interpretations contained in the referenced policies such as determination of potential to emit, emission of non-volatile organic compounds, reactivation of temporarily shut down plants, and other specifics that are clearly defined in the policies. Those sources that are subject to 401 KAR 51:017 are required by these policies to prepare and submit to the agency information describing the control technology that will be employed to allow the agency the opportunity to evaluate the information and decide whether or not the controls meet the minimum requirements of 401 KAR 51:017.

Chapter 3. Volatile Organic Compounds. These policies affect all current regulations (43 regulations) that control volatile organic compounds. These policies clarify, interpret or fill gaps in some of these 43 regulations. They exempt certain source categories; otherwise, they would be unnecessarily subject to control requirements, and clarify how calculations should be made to determine emissions to assure consistency among all sources. The types of entities that are affected are existing sources in nonattainment areas that emit volatile organic compounds and fall under any of 17 source categories listed in 401 KAR Chapter 61 and any new major source which is one of 20 source categories listed in 401 KAR Chapter 59. According to this agency's records, there are 630 sources that are or could be affected by these policies. This chapter also states a method by which condensed organic compounds may be quantified. These condensable organic compounds are treated as particulate matter, as defined in 401 KAR 50:010. The types of entities that are affected are existing and new sources that use high boiling point and low vapor pressure solvents and apply heat to drive out the organic solvents. It is estimated that about 10 to 12 existing and new facilities will be subject to 401 KAR 59:010 and 401 KAR 61:020 upon application of this policy.

Chapter 4. New Source Performance Standards. The U.S. EPA, under mandate of Section 111 of the Clean Air Act, promulgated regulations for new or modified sources in 47 source categories. This agency has promulgated regulations to cover 39 of these federal regulations. These source categories are contained in 401 KAR Chapter 59. This agency's records show there are presently 374 sources subject to these regulations. The referenced policies interpret many of the provisions of the regulations in Chapter 59, confirming applicability, or exempting sources from specific or all provisions guided by the intent of these regulations. The most prevalent types of sources are indirect heat exchangers, electric utility plants, incinerators, asphalt concrete plants, petroleum refineries, steel plants, Kraft pulp mills, coal preparation plants and surface coating operations. Some or all of the 374 presently affected sources could be affected by these policies. In addition, depending on Kentucky's future industrial and economic development, the policies may affect an additional 30 to 50 sources per year.

Chapter 5. Permitting. Throughout the four-year life of the permit fee regulation (401 KAR 50:036) several situations were brought up that could lead to more than one interpretation to some provisions. Different interpretations could lead to inconsistency in assessing permit fees. To avoid this, and to apply the intent of the permit fee regulation as was expressed in background material used in its development, unified interpretations which lead to policy decisions in the past are being formally adopted in these policies. Any source which must obtain a permit from this agency for constructing and/or operating an air contaminant source (with some clearly defined exceptions) will be affected by these policies if its circumstances fall under the categories addressed by these policies. It is estimated that a total of 540 sources per year are subject to the permit fee regulation.

Chapter 6. Nonattainment Areas. The language in EPA's regulation 40 CFR 52.24 resulted in seeking EPA interpretation of federal requirements relative to statutory restrictions on sources constructing in nonattainment areas. This interpretation is being incorporated by reference to implement 401 KAR 51:052 in a manner consistent with national policy. The applicability of emission offsets required by 401 KAR 51:052 raised a number of questions relative to interpretation of certain provisions. Previous agency decisions are compiled in these policies to clarify a number of issues relative to criteria for screening, permit conditions, control technology, exemptions allowed by 401 KAR 51:052, and determination of emission credit baseline. The types of entities that will be affected by these policies are sources of air pollutants located in nonattainment areas which intend to increase emissions of a pollutant for which the area has been designated nonattainment. Currently, there are 36 sources subject to 401 KAR 51:052. It will be difficult to estimate the number of sources that will be affected in the future since the agency is not privy to advance information on industry's intent to increase production and make process changes of the type that may be affected by the provisions of these policies. Judging by past experience and based on the fact that the number of nonattainment areas will be drastically reduced in the near future, this agency expects that perhaps no more than 5-7 sources will be affected each year.

Chapter 7. Source Testing Reports. Sources are

required by 401 KAR 50:045 and 59:005 to demonstrate compliance through source tests. Throughout the life of these regulations and previous versions of the same regulations (nearly 13 years), problems were encountered in accepting source test reports because of lack of information necessary for evaluation, misuse of sampling methods, lack of calibration tests and some other general misunderstanding of the regulatory requirements. It was found necessary to establish a testing protocol, conduct pretest meetings to agree on sampling procedures and on facility operating conditions, and develop a format that contains the necessary information for an acceptable report. These have been incorporated as policies. The types of sources that are required to conduct performance tests are explicitly defined in 401 KAR 59:005. The number of affected sources is expected to be 60 sources per year.

(a) Direct and indirect costs or savings to those affected: These policies affect different sources in many different ways. The cost to sources that will be directly affected will be substantial, not from the effect of these policies, but the definite application of other regulations in the field of air pollution control. These policies either reiterate that a source is affected (thus reiterating the associated cost for compliance) or exempt a source, thus realizing a cost saving. The bulk of the cost will be in control equipment, raw material, or fuel that does or does not have to be installed or used. Another cost, but of a lesser magnitude, is the cost associated with preparation of documentation demonstrating required control technology, air quality modeling and ambient air monitoring. By providing an acceptable analysis, properly conducting tests, submitting acceptable reports, and submitting adequate documentation at the onset, the implementation of these policies will result in cost savings by not having to repeat these activities.

1. First year: The reader can appreciate the difficulty in aggregating the cost savings from all of the possible areas mentioned above, and the estimate of the number of all the cases that apply. The following range of savings could be realized for each of the circumstances if applicable: control equipment $3,000 - $3 million, air quality modeling $500-$50,000, ambient monitoring $20,000-$100,000, source test $5,000-$10,000, and documentation $1,000-$10,000. These numbers are averages and may vary considerably depending on complexity of the source or process.

2. Continuing costs or savings: These include operating costs of control equipment (if required by regulation) or savings, if exempted. This may vary from source to source and range as much as $20,000 to $5 million (or more) per year. Also, if ambient monitoring is required by other regulations, the effect this regulation will have is to require the source to conduct a quality assurance and quality control program which may cost the source up to $50,000 per study.

3. Additional factors increasing or decreasing costs (note any effects upon competition): These policies promote consistency in applying regulatory provisions to similar sources. This is expected to foster an element of fairness and eliminate the competitive economic disadvantage of one source over another if they both fall under the same circumstance. If one source has to control its process, a competitor will also have to control. Likewise, if one source was relieved of a requirement, a competitive source will also be relieved to eliminate the economic disadvantage on the latter.

(b) Reporting and paperwork requirements: The paperwork and reporting requirements are delineated in other regulations. These policies require that the submitted reports be prepared in a certain format and contain specified information. Although this might be viewed as additional paperwork on sources, in the long run it is viewed as reducing paperwork by eliminating the rewriting of reports, the repeating of unacceptable tests, or the rejecting of data which are expensive to obtain, but which have been gathered improperly.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct costs or savings will be realized because of these policies. However, there will be indirect savings to the agency in the form of time saved by clarifying and interpreting, in a written form, the applicability of regulations. This will result in better efficiency with ultimately better service to the citizens, which is difficult to measure in dollars.

1. First year: The indirect savings will most likely be in the area of reviewing new permit applications.

2. Continuing costs or savings: The permitting process will continue in the form of construction and operating permits, thus the annual savings will be similar to first year's savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be an overall reduction in paperwork by eliminating from the onset unacceptable reports and analyses which the agency had to review in the absence of guidelines.

(3) Assessment of anticipated effect on state and local revenues: State and county agencies and municipalities which own and operate air contaminant sources are required to comply with applicable air pollution control regulations. Costs and savings, addressed earlier, that might be realized for privately owned sources might also be applicable to publicly owned sources.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The agency has two alternatives. The first alternative is to deal with issues on a case-by-case basis guided by previous decisions, criteria or policies rather than promulgating these policies in the form of regulations; in other words, follow the course of action followed prior to the 1984 Legislative Session. This alternative was rejected because KRS Chapter 13A prohibits agencies from regulating by policies. The second alternative is to incorporate the policies in the body of the current regulations. This alternative was rejected for two reasons. First, this would have required the amendment of each of the more than 140 regulations, with the associated burden of paperwork associated with the promulgation process. This was considered to be an inappropriate use of badly needed resources. Second, some of the policies and procedures do not lend themselves to a format

acceptable to the Regulation Compiler, without extensive rewriting. The agency also rejected that alternative.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. In fact, this proposed regulation is complementary to the rest of the air pollution control regulations by giving explanation, interpretation and expression of intent.

(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? Yes.

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

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, and as amended by Federal Register 49 FR 38946, October 2, 1984, and 49 FR 43647, October 31, 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. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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
(1) Type and number of entities affected: This regulation limits emissions of volatile hazardous air pollutants (VHAP) from new and existing equipment that operates in volatile hazardous air pollutant service (equipment that contains or contacts a fluid that is at least ten percent by weight a VHAP). Presently the only chemical that is defined to be a VHAP is benzene, therefore, the only sources affected are those subject to 401 KAR 57:040, Equipment leaks of benzene. This regulation contains the equipment and work practice standards that shall be used by sources subject to this regulation and the benzene regulation (401 KAR 57:040). This regulation is being amended to add corrections to the federal regulation, as promulgated by EPA. Available information indicates that the revisions made to the federal regulation will not affect any sources in Kentucky. Any new source would be subject to the requirements of 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 or the proposed amendment, no costs or savings are incurred. Future sources will have the same controls required in Kentucy 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 due to the proposed amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements due to the proposed amendment.

(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: On January 7, 1985, the Cabinet promulgated 401 KAR 57:035, which adopts by reference the federal regulation on National Emission Standards for Hazardous Air Pollutants (NESHAP) for equipment leaks of volatile hazardous air pollutants, 40 CFR 61, Subpart V. During the development of the state's regulation, U.S. EPA revised the federal regulation on October 2, 1984 (49 FR 3946) and October 31, 1984 (49 FR 43647). Those revisions are now being added to the state's regulation so that Kentucky's regulation will be identical to the federal regulation, and so that the Cabinet may be granted authority to implement the provisions of this NESHAP regulation and issue permits to new sources. In addition, this regulation is being amended to add the locations in the Commonwealth where individuals may inspect the material that is adopted by reference.

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 RESOUCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

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. (1) 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.

(2) The size limitation of 1,000 megagrams per year for application of the benzene standards shall be based on throughput or processing rate, rather than consumption. Throughput shall be determined by a mass balance during the design stages of process operations, accumulating all benzene processed in one (1) year.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street,

Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and
(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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
(1) Type and number of entities affected: This regulation controls emissions from specified new and existing equipment in benzene service (equipment which contains materials with a benzene concentration of ten percent or more by weight). There are two sources in Kentucky which are subject to this regulation, and they are currently in the process of complying with its provisions. Available information indicates that other sources are potentially subject to this regulation. They are currently negotiating with EPA to determine their applicability to the federal regulation. The state's regulation is being amended to clarify the applicability of this regulation, as specified in a memorandum from U.S. EPA (see comments under Additional Information). If those sources that are negotiating with EPA are found to be subject to the federal regulation and the interpretation given in EPA's memorandum, then those sources will also be affected by this proposed amendment for Kentucky's regulation. Any source would be subject to the requirements in the federal regulation and the policy interpretation, 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: There will be no costs or savings to those sources that are already complying with the provisions of the regulation. If the sources that are still negotiating with EPA are determined to be subject to this regulation, there will be additional costs associated with recordkeeping and reporting requirements. 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 incorporating this policy statement.
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 paperwork requirements appear in 40 CFR 61.247. There are no additional requirements due to this amendment, beyond which the sources now have to follow if they are found to be subject to the federal regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None due to the proposed amendment.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None due to this amendment.
(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: On January 7, 1985, the Cabinet promulgated 401 KAR 57:040, which adopts by reference the federal regulation on National Emission Standards for Hazardous Air Pollutants (NESHAP) for equipment leaks of benzene, 40 CFR, Subpart J, made effective by Federal Register 49 FR 23512, June 6, 1984. This regulation is being amended to incorporate the provisions of a policy statement which was issued by the U.S. EPA (Memorandum dated November 16, 1984 from Edward E. Reich, Director of the Stationary Source Compliance Division). The memorandum clarifies the applicability of the standards for benzene equipment leaks. EPA determined that the size limitation of 1,000 megagrams per year shall be based on the throughput or processing rate, and shall not be based on consumption. The throughput shall be based on the amount of benzene through all the equipment in all process units of a plant site. Furthermore, throughput shall be determined by a mass balance during the design stages of process operations, accumulating all benzene processed in one year. In addition, owner/operators shall demonstrate the design capacity for each process unit in a plant, and shall compare the sum of these capacities to the size limitation of 1,000 mg/year. This regulation is also being amended to add the locations in the Commonwealth where individuals may inspect the material that is adopted by reference.

Tiering:
Was tiering applied? Yes. The regulation shall not apply to equipment in process units that produce benzene at plant sites that are designed to produce or use benzene in quantities of 1,000 megagrams per year or less. The proposed amendment clarifies that applicability of the size limitation.

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

401 KAR 61:165. Existing primary aluminum reduction plants.

RELATES TO: KRS [Chapter 224] 224.320, 224.330, 224.340
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 emissions from existing primary aluminum reduction plants.

Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility which means each potroom group within a primary aluminum reduction plant commenced before the classification date defined below.

(2) A physical change in, or change in the method of operation of, each potroom group within a primary aluminum reduction plant in conformance with the change from this regulation, as effective November 5, 1981, to this regulation, as effective October 1, 1984, shall not be a modification; provided, that the potroom group within a primary aluminum reduction plant was an affected facility at the time of the physical or operational change.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Primary aluminum reduction plant" means any source manufacturing aluminum by electrolytic reduction.

(2) "Potroom" means a building unit which houses a group of electrolytic cells in which aluminum is produced.

(3) "Potroom group" means an uncontrolled potroom, a potroom which is controlled individually, or a group of potrooms or potroom segments ducted to a common control system.

(4) "Roof monitor" means that portion of the roof of a potroom where gases not captured at the cell exit from the potroom.

(5) "Total fluorides" and "gaseous fluorides" means elemental fluorine and all fluoride compounds, as measured and distinguished by reference methods specified in Section 7 or equivalent or alternative methods.

(6) "Primary control system" means an air pollution control system designed to remove gaseous and particulate fluorides from exhaust gases which are captured at the cell.

(7) "Classification date" means October 23, 1974.

(8) "Dry scrubbing plant" means each primary aluminum reduction plant with a primary control system which operates in a manner whereby potroom group gases flow through a reaction bed consisting of alumina prior to being treated by dry removal methods for particulate emissions control. The resulting reaction bed products are then used as feed to the potroom group electrolytic reduction cells.

(9) "Startup cell" means an electrolytic reduction cell which is initially devoid of any materials other than carbon cathodes and anodes. Such a cell undergoes a prebake period by passing electrical current through anodes resting on the cathode floor, then has the necessary electrolyte and aluminum added, such that it will produce aluminum.

(10) "Sick cell" means an electrolytic reduction cell which has lost its proper heat balance, cannot maintain a solid crust, and must be removed from the primary control system to receive corrective attention.

(11) "Normal potroom operations" means any potroom activity and includes uncaptured cell gases resulting from startup cells, cell tapping, anode changing, ore additions, or any other potroom operation but does not include operations due to sick cells.

(12) "State Implementation Plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

Section 3. Standard for Visible Emissions. On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere:

(1) From any potroom roof monitor any gases which exhibit ten (10) percent opacity or greater during normal potroom operation except startup cells;

(2) From any potroom roof monitor section directly above sick cells or startup cells any gases which exhibit forty (40) percent opacity or greater;

(3) From any dry scrubbing plant primary control system any gases which exhibit ten (10) percent opacity or greater; or

(4) From any primary aluminum reduction plant other than a dry scrubbing plant primary control system any gases which exhibit twenty-five (25) percent opacity or greater.

Section 4. Standard for Fluorides. (1) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, the owner or operator subject to the provisions of this regulation shall:

(a) For a dry scrubbing plant cause to be discharged into the atmosphere no gases which contain total fluorides in excess of 1.9 lb/ton of aluminum produced except that emissions between 1.9 lb/ton and 2.5 lb/ton will be considered in compliance if the owner or operator demonstrates to the cabinet's satisfaction that exemplary operation and maintenance procedures were used with respect to the emission control system and that proper control equipment was operating at the affected facility during the performance test.

(b) For any primary aluminum reduction plant other than a dry scrubbing plant cause to be discharged into the atmosphere through each potroom roof monitor no gases which contain gaseous fluorides in excess of 3.25 lb/hr.

(c) For a primary aluminum reduction plant other than a dry scrubbing plant cause to be discharged into the atmosphere from any primary control system no gases which contain gaseous fluorides in excess of 1.0 lbs/ton of aluminum produced except that any such plant may cause to be discharged into the atmosphere gases which contain gaseous fluorides not exceeding 290

lb/hr providing that a State Implementation Plan allowing such emissions has been approved by the U.S. EPA. The minimum stack height for the primary control system shall be 400 feet.

(2) In the event of a recorded violation of the fluoride standard prescribed in 401 KAR 53:010, the cabinet shall require that remedial measures be initiated from the source(s) responsible for causing said violation.

Section 5. Standard for Particulate Emissions. On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any primary aluminum reduction plant other than a dry scrubbing plant primary control system any gases which contain particulate emissions in excess of 0.010 gr/scf. Addition of dilution air shall not constitute compliance.

Section 6. Monitoring of Operations. (1) The owner or operator of any primary aluminum reduction plant other than a dry scrubbing plant subject to the provisions of this regulation shall install, calibrate, maintain, and operate monitoring devices which can be used to determine daily the weight of the aluminum produced. The weighing devices shall have an accuracy of plus or minus five (5) percent over their operating range.

(2) The owner or operator of any primary aluminum reduction plant other than a dry scrubbing plant shall maintain a record of daily production rates of aluminum, raw material feed rates, and cell or potline voltages.

(3) The owner or operator of any affected facility shall install, use, and maintain ambient air monitoring equipment in accordance with such methods as the cabinet shall prescribe; establish and maintain records of same; and make periodic emission reports at intervals prescribed by the cabinet.

Section 7. Test Methods and Procedures. (1) Reference methods as defined in Appendix A of 40 CFR 60 or as otherwise specified, filed by reference in 401 KAR 50:015, except as provided for in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed in Section 3, 4 and 5 as follows:

(a) For sampling emissions from stacks:

1. Reference Method 13A or 13B for the concentration of total fluoride and the associated moisture content;
2. Reference Method 1 for sample and velocity traverses;
3. Reference Method 2 for velocity and volumetric flow rate;
4. Reference Method 3 for gas analysis; and
5. Reference Method 5 for particulate emissions.

(b) For sampling emissions from roof monitors not employing stacks or pollutant collection systems:

1. Reference Method 14 and Kentucky Method 130 for the concentration of gaseous fluorides and associated moisture content;
2. Reference Method 1 for sample and velocity traverses;
3. Reference Method 2 and Reference Method 14 for velocity and volumetric flow rate; and
4. Reference Method 3 for gas analysis.

(c) For opacity determination: Reference Method 9.

(2) For Reference Method 13A or 13B, 14, and Kentucky Method 130, the sampling time for each run shall be at least eight (8) hours for any potroom sample, and the minimum sample volume shall be 6.8 dscm (240 dscf) for any potroom sample except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the cabinet.

(3) The air pollution control system for each affected facility shall be constructed so that volumetric flow rates and total fluoride emissions can be accurately determined using applicable methods specified under subsection (1) of this section.

(4) The rate of aluminum production is determined by dividing 720 hours into the weight of aluminum tapped from the affected facility during a period of thirty (30) days prior to and including the final run of a performance test.

(5) For each run for any plant with an emission limitation expressed in lbs/ton of aluminum produced, potroom group emissions expressed in kg/metric ton of aluminum produced shall be determined using the equation in Appendix A of this regulation.

(6) For any sampling harness which does not comply with Reference Method 14 in Appendix A to 40 CFR 60, as amended on June 30, 1980, the cabinet shall prescribe such sampling procedures as it deems appropriate.

Section 8. Compliance Timetable. (1) The owner or operator of an affected facility shall be required with respect to startup cell and sick cell emissions to achieve compliance with this regulation no later than February 1, 1982, except as provided for under Section 9.

(2) The owner or operator of an affected facility shall be required with respect to the primary removal system to achieve final compliance no later than February 1, 1981.

Section 9. Variance. To allow for technological and economic circumstances unique to a source, variation from the visible emission standard for sick or startup cells specified in Section 3(2) shall be granted by the cabinet when supported by adequate technical and economic documentation reasonably acceptable to the cabinet.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: March 12, 1985

FILED WITH LRC: March 14, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

APPENDIX A TO 401 KAR 61:165
EQUATION FOR POTROOM GROUP EMISSIONS

$$E_P = \frac{(CQ)_1 10^{-6} + (CQ)_2 10^{-6}}{M}$$

Where:
E_P = Primary control system emissions of gaseous fluorides in kg/metric ton of aluminum produced at any plant other than a dry scrubbing plant.

= Potroom group emissions of total fluorides in kg/metric ton of aluminum produced at dry scrubbing plants.

C = For dry scrubbing plants, concentration of total fluorides in mg/dscm as determined by Reference Method 13A or 13B, or Reference Method 14 as applicable.

= For plants other than dry scrubbing plants, concentration of gaseous fluorides as determined by Kentucky Method 130.

Q = Volumetric flow rate of the effluent gas stream in dscm/hour as determined by Reference Method 2 and/or Reference Method 14, as applicable.

10^{-6} = Conversion factor for mg to kg.

M = Rate of aluminum production in metric ton/hour as determined by Section 7(4).

$(CQ)_1$ = Product of C and Q for measurements of primary control system effluent gas streams.

$(CQ)_2$ = Product of C and Q for measurements of roof monitor effluent gas stream at dry scrubbing plants. $(CQ)_2$ shall be equal to zero for any plant other than a dry scrubbing plant.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann
(1) Type and number of entities affected: One primary aluminum reduction plant will be affected by the proposed amendment. This plant is the National Southwire Aluminum plant.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed amendment is to clarify that a physical change in, or change in the method of operation of, each potroom group within a primary aluminum reduction plant in conformance with the change from this regulation, as effective November 5, 1981, to this regulation, as effective October 1, 1984, shall not be a modification; provided, that the potroom group within a reduction plant was an affected facility at the time of the physical or operational change. This clarification assures that the above defined changes will not be considered a modification and will therefore result in a savings.
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
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation is being amended to clarify that certain changes in an affected facility shall not be considered a modification. This proposed amendment affects the National Southwire Aluminum plant in Hawesville, Kentucky, and clarifies that the changes in the source that were allowed by the previous amendment to the regulation are not considered as modifications.

Tiering:
Was tiering applied? No. The proposed amendment is for clarification of language.

TRANSPORTATION CABINET
Motor Vehicle Commission
(Proposed Amendment)

605 KAR 1:030. Applications.

RELATES TO: KRS 190.010 to 190.080 [190.030]
PURSUANT TO: KRS 190.020, 190.073 [13.082, 190.010, 190.015, 190.030, 190.035]
NECESSITY AND FUNCTION: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. This regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission of applications and the content thereof to facilitate processing of applications and the issuance of the license.

Section 1. Upon receipt of a completed application other than an application for a license as a motor vehicle salesperson, manufacturer, factory branch or factory representative, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.

Section 2. Applicant will be notified of the acceptance or rejection of his application, and if the application is rejected, the grounds therefor must be specifically stated, and the applicant shall further be notified, in that event, of his right to a hearing before the commission in accordance with the rules and regulations of the commission.

Section 3. No application may be accepted or license granted unless the applicant has an established place of business as defined in KRS 190.010.
(1) The office shall be underpinned and on a

permanent foundation.
(2) The office shall have the following equipment:
(a) Electricity;
(b) File cabinet(s);
(c) A telephone;
(d) A desk;
(e) Chairs.

[Section 4. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this regulation provided he has suitable space and adequate facilities therein to conduct the business of a motor vehicle dealer.]

Section 4. [5.] (Applies to retail only.) A motor vehicle dealer shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 5. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this regulation provided he has suitable space and adequate facilities therein to conduct the business of a motor vehicle dealer.

Section 6. An applicant for a license conducting more than one (1) business at the proposed location shall be capable as to fitness and ability to properly conduct the business activity authorized by the license. [If an applicant for a license will be conducting more than one (1) business at the proposed location, and if the primary business of the applicant is not one to be licensed under KRS 190.010, et seq., then the applicant must comply with the following:]

Section 7. All applicants shall comply with the following:
(1) Submit a financial statement. The commission may require the applicant to furnish bond as authorized by statute.
(2) Submit at least six (6) photographs of the premises to be occupied by the applicant.
(3) Submit a detailed drawing of his premises in relation to the nearest roadway. This drawing is to include location and size of office, display area and location of dealership sign.
(4) Furnish a personal data sheet on each individual owning a portion of the business and/or officers of a corporation, including a photograph and an employment history of each such person.
(5) Applicant, partner or corporate officer must sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records.
(6) Applicant must obtain garage liability insurance and file with the commission a certificate of insurance (form TD 95-99) in the exact name in which it applies for a license.
(7) Applicant will be required to verify that it is familiar with the laws concerning the purchase and sale of motor vehicles. Failure to demonstrate such proof constitutes [may be] grounds for denial of license. A copy of the applicable laws and regulations governing the purchase and sale of motor vehicles shall be given to each applicant. In addition, applicants shall execute such other forms dealing with their familiarity with such specific statutory and regulatory requirements as the commission may indicate.
[(a) Applicant must have a sign, if applicable, in compliance with Section 1 of this regulation, clearly indicating that applicant is a motor vehicle dealer in addition to any other signs he may have.]
(8) [(b)] Applicant must have a hard surface lot (gravel, asphalt, concrete or other suitable covering) of at least 2000 square feet [of sufficient size to support its business] for customer parking and vehicle storage area. This lot shall be used exclusively for the display and showing of vehicles for sale and customer parking, and shall be constructed in such a manner that it will not allow the flow of public traffic through it. The lot shall be a distinctively defined area, from that which surrounds it.
(9) [(c)] Applicant must have 100 square feet of [demonstrate that it has sufficient] office floor space to carry on the activity authorized under the license for which the application is submitted. The [Sufficient] office space need not be a separate walled enclosure, but must be an area which will be used to conduct the activity authorized under the license in addition to the area necessary to conduct the applicant's primary business. The office shall be located on the display lot and shall not be a part of a residence.

Section 8. [1.] An applicant who conducts an automobile salvage or junk business on the same premises must be in compliance with all state regulations regarding junkyard operations. Applicant must have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 9. [2.] If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where such repairs are made must be allocated for the licensed activity.

Section 10. [7.] Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.

Section 11. [8.] A licensee shall have a sales tax permit number from the Revenue Cabinet.

ERNIE BATES, Vice Chairman
APPROVED BY AGENCY: February 8, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed amendment to 605 KAR 1:030 has been scheduled for Friday, April 26, 1985 at 10 a.m. local prevailing time, at the office of the Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40622. Persons interested in attending this public hearing shall, at least five (5) days prior thereto, contact in writing: David Garnett, Executive Director, Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett, Executive Director

(1) Type and number of entities affected: All licensed Kentucky motor vehicle dealers, approximately 3,000 in number.

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

1. First year: KRS 190.030 provides for a specific license fee to be paid for issuance of a motor vehicle dealer license. Otherwise, as the proposed amendment deals with the contents of an application, no direct or indirect costs or savings to the affected group are anticipated, with the exception of those noted in (1)(a)3 below.

2. Continuing costs or savings: See (1)(a)1 above, and (1)(a)3 below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendments require furnishing to the commission a personal photograph of each applicant for a dealer license, as well as evidence of an equipped office facility of at least 100 square feet of floor space and a display/storage/parking lot area with some sort of covering, of at least 2,000 square feet. The square footage requirement and the office equipment requirement may cause a licensee or an applicant to expend certain sums to upgrade a presently licensed facility in order to come into compliance. No effect upon competition is foreseen as these requirements will be applied in a uniform manner.

(b) Reporting and paperwork requirements: Each application for a motor vehicle dealer license now contains ten pages. The proposed amendments would increase this by one page per applicant for the inclusion of a personal photograph and employment history. Additionally, the proposed amendment in Section 7 would require the commission to furnish to the applicant a copy of the applicable laws and regulations governing the purchase and sale of motor vehicles. It is anticipated that these, in condensed form would require another four to five pages; however, this is for the applicant's information only, and would require no action on his part other than becoming familiar with them.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal printing costs for the necessary additions to the license application form; minimal costs associated with receiving and reviewing the applications with the additional information. In addition, it is anticipated that the proposed amendments, by specifying these additional requirements, would save the Motor Vehicle Commission funds by decreasing the number of appeal hearings requested by applicants who have been denied. In other words, the proposed amendments seek to "flesh out" the general language of KRS Chapter 190, thereby providing specificity and leaving less room for differing interpretations of the intent of the General Assembly.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Processing applications and retaining the files, only. The commission keeps a permanent record of all applications.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation as it now stands is misworded, misleading and confusing. As it now reads, only those applicants who are conducting more than one business at the proposed location for which they are seeking a dealer license need submit an application.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflicting, overlapping or duplicated statute, regulation or policy is apparent.

(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. The proposed amendments would affect all classes of licensees and applicants in a uniform manner; there would be no disproportionate impact on the regulated entities.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 4:020. Plans and specifications for construction.

RELATES TO: KRS 156.160, 162.060

PURSUANT TO: KRS [13.082,] 156.070, 156.160, 162.060

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt rules and regulations relating to sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, and school buildings and classrooms; and KRS 162.060 requires approval of all plans and specifications for school building construction by the Superintendent of Public Instruction, in accordance with rules and regulations of the State Board. This regulation implements these statutory duties and prescribes the procedures and criteria for acquiring the requisite plan and specification approval.

Section 1. After approval by the Superintendent of Public Instruction of a construction project application of forms provided by the State Board of Education containing program and financial information, the architect shall prepare schematics of proposed construction from written educational requirements supplied by the local board of education. These schematics, approved by the local board of education, shall be submitted to the Superintendent of Public Instruction for review and approval along with an information copy of the educational requirements. Provided no action is taken by the local board of

education within one (1) year from the date of approval and written notification given by the Superintendent of Public Instruction, the approval is subject to review and/or rescission.

Section 2. Upon approval of the schematic plans, the design development plans shall be submitted to the Superintendent of Public Instruction for review and approval. The tentative specifications and the tentative cost estimate shall be submitted for review by the Superintendent of Public Instruction on forms provided by the State Board of Education.

Section 3. Design development plans shall include the type of construction, a general vicinity plan, and a plot plan which show the location of existing and proposed buildings, existing and proposed contour lines, utility lines and easements, driveways and highways, floor plan of building, preliminary design of mechanical, electrical and structural systems, sections through the building and elevations of the buildings. The architect shall include a one-fourth (1/4) inch scale drawing of all special areas after acceptable design development plans have been submitted as set forth in Section 2. These drawings shall show all equipment proposed in each special area. After approval of design development plans by the Superintendent of Public Instruction, the local board of education may authorize the architect or engineer to prepare the construction documents.

Section 4. Approval of the construction documents shall be given in writing by the Superintendent of Public Instruction prior to advertisement for bids. The construction documents shall include the provisions required in the design development plans plus detailed information concerning site development, plumbing, heating, ventilation, electrical and structural design. The specifications shall provide for contractural conditions; insurance; bid, performance and payment bonds; prevailing wage scale; and technical specifications. Bid, performance and payment bonds are required on contracts in excess of $25,000. A construction manager employed by a local board of education shall provide the owner a 100 percent performance bond in the amount of the fee indicated on the Owner/Construction Manager Contract.

Section 5. Until such time that construction is finally completed and/or occupied by the local board of education, the contractors shall carry any and all insurance required by law and regulation to hold the board safe from loss as required by the contract documents. Such insurance shall include but not be limited to liability, builders' risk, including the perils of fire and extended coverage, vandalism, malicious mischief, and boiler and machinery insurance. The architect or engineer shall attest to the board in writing of the existence of coverage according to the law and contract documents. In the event the local board of education elects to carry a portion of the necessary insurance, a plan for such coverage shall be submitted to the Superintendent of Public Instruction for his approval.

Section 6. Performance specification procedure may be used by local boards of education for proposed capital construction projects. The proposed performance specification as prepared by the local board shall be approved by the Superintendent of Public Instruction prior to advertisement for bids.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Judge
(1) Type and number of entities affected: 180 LEAs
(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: 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: Required of general contractors, but since construction manager supplants a portion of the general contractor's responsibilities, therefore should be required of them.
(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:

Tiering:
Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 4:030. Local board's contract with architect, engineer.

RELATES TO: KRS 156.160[(11)], 322.360
PURSUANT TO: KRS [13.082,] 156.070, [156.130,] 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to prescribe forms, including contract forms, for use in local school districts; and KRS 322.360 requires a local school district, when engaged in the construction of any public work involving engineering (and costing more than $2,000), to utilize a licensed engineer or architect to directly supervise the preparation of plans, specifications, and estimates and the execution of construction. This regulation provides [To provide] a legal document of agreement concerning work to be done and the amount of pay to be received by the required engineer or architect.

Section 1. A local board of education and an architect or engineer currently registered in Kentucky shall negotiate and enter into a contract for services needed, pursuant to KRS 322.360, on forms provided by the State Board of [for Elementary and Secondary] Education prior to preparation of plans for remodeling, alterations, or construction of school buildings and facilities. Within fifteen (15) days after the execution by the parties thereto, this contract between the local board of education and the architect or engineer shall be submitted to the Superintendent of Public Instruction for review and approval. The local district shall be notified of the approval or disapproval of the contract within thirty (30) days.

Section 2. The architect or engineer shall be responsible to the owner to provide on-site visitation, inspection of, and reporting on the construction of the project, to the extent that the architect or engineer shall certify, to the best of his ability, professional judgement, and with due diligence, that all phases of the project have been completed in conformance with the sealed (Kentucky registration stamp affixed to plan sheets) plans and specifications and any duly authorized changes thereto as approved by the Superintendent of Public Instruction and other agencies having jurisdiction.

Section 3. The local board of education shall not disburse the final ten (10) percent of the architectural or engineering fee until the certification statement of completion of the project, as required by Section 2 of this regulation, and accompanied by as-built drawings, is filed with and receipt acknowledged by the Superintendent of Public Instruction in accord with architect/engineer contract.

Section 4. Architects and engineers simultaneously providing the services of a construction manager shall meet the provisions of 702 KAR 4:020, Section 4.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Judge
(1) Type and number of entities affected: 180 LEA's
(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: 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: Increasing responsibility of architects/engineers in school construction projects.
(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:

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 7:070. Interscholastic athletic eligibility and requirements; redshirting prohibited.

RELATES TO: KRS 156.070[, 156.160(6)]
PURSUANT TO: KRS [13.082,] 156.070[, 156.160]
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of interscholastic athletics in the common schools, and the authority to designate an organization or agency to manage such athletics. This regulation is needed to

establish with the public common schools a uniform system of eligibility to participate in interscholastic athletics and to designate an organization to manage interscholastic athletics in the secondary schools. [establish within the public common schools a uniform system of eligibility to participate in interscholastic athletics.]

Section 1. Eligibility to Participate in Elementary School Athletics. (1) No pupil in the public common schools repeating the sixth grade during the 1985-86 school year, or enrolled in grades seven (7) [one (1)] through eight (8) during said year or thereafter and not subject to subsection (2) of this section, [in the public common school] shall be eligible to participate in interscholastic athletics the second, or any subsequent, year the pupil is enrolled in the same grade, and no public common school shall participate in an athletic contest with another school that does not adhere to this policy.

(2) Any pupil enrolling in the sixth grade of a public common school, and not repeating said grade, during the 1985-86 school year, and any subsequent sixth grade enrollee, shall have three (3) school years from the time of initial sixth grade enrollment to complete his or her eligibility in elementary school interscholastic athletics. No public common school shall participate in an athletic contest with another school that does not adhere to this policy.

Section 2. Eligibility to Participate in Secondary School Athletics. (1) The eligibility of students to participate in interscholastic athletics at the secondary level shall be governed by the constitution bylaws and tournament rules of the Kentucky High School Athletic Association (KHSAA), 1984-85, a copy of which is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said rules may be obtained from the Office of Instruction, Department of Education, Frankfort, Kentucky 40601.

(2) (a) Effective with the 1985-86 school year, pupils enrolling in the sixth grade of any school shall have seven (7) school years from the time of such enrollment to complete their eligibility in high school interscholastic athletics subject to the jurisdiction of KHSAA.

(b) No pupil enrolled in the seventh or eighth grade in 1985-86, or thereafter, and not subject to paragraph (a) of this subsection, shall be eligible for more than a total of one (1) year in each grade.

(c) No student who initially enrolled in the ninth grade during or prior to the 1985-86 school year or who is not otherwise subject to paragraph (a) of this subsection, and who has been enrolled in grades 9-12 eight (8) semesters, shall thereafter be eligible.

(d) The KHSAA shall adopt the provisions of this subsection as a part of its by-laws and shall fully implement and enforce said eligibility requirements for all high school athletics subject to its jurisdiction.

Section 3. Any public elementary or secondary school or school employee or official who knowingly allows participation of an ineligible player hereunder, or who, through reasonable diligence, should have known of such ineligibility, shall be considered in noncompliance with state accreditation standards or guilty of willful neglect of duty or breach of contract. Such shall apply not only to coaches but also to personnel supervising coaches; such as but not limited to an athletic director, an assistant principal, a principal, an assistant superintendent, a superintendent, or a school board member.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Bale
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect cost of implementing this change in regulation.
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: There will not be additional reporting or paperwork required.
(2) Effects on the promulgating administrative body: This regulation will have no effect (financial/paperwork) 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: State and local revenues will not be affected.
(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: By-law 5 of the "Kentucky High School Athletic Association's Constitution and By-Laws."
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering not applied since all school boards (schools) must comply with elementary and secondary interscholastic athletics.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:005. Educational Improvement Act.

RELATES TO: KRS 158.650 to 158.740
PURSUANT TO: KRS 156.070, 158.650, 158.670, 158.700
NECESSITY AND FUNCTION: KRS 158.650 to 158.740, as amended by Senate Bill 202, the Educational Improvement Act, mandate a program of assessment, testing, annual performance reports, educational improvement plans and various sanctions to insure the right of public school students to acquire the competencies in the essential skills necessary to complete high school, pursue post secondary education, or enter the work force; and to assure such students access to programs and services appropriate to their educational needs in the areas of competencies in the essential skills, with the Department of Education to administer the act pursuant to regulations of the State Board of Education and to develop a comprehensive implementation plan. This regulation implements the duties and functions of the Educational Improvement Act of 1978, as amended by Senate Bill 202, by adopting the Department of Education's revised implementation plan.

Section 1. Each local district board of education shall prepare an Annual Performance Report which shall include local district data for the following factors: annual transportation cost per pupil transported; annual current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percent of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; results of the state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percent average daily attendance; number and percent of students going to college or other post-secondary training; number and percent of students enrolled in special education and completing Individual Education Plans; percent of enrollment classified as economically deprived; percent attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; expenditures for staff in-service; courses exceeding the state Program of Studies requirements; and an executive summary of the Master Educational Improvement Plan Progress Report. This report shall be submitted to the State Board of Education by December 15, 1984 for the 1983-84 school year, and by September 15 of each succeeding school year and shall be published in the newspaper with the largest circulation in the county by October 1.

Section 2. Each local district board of education shall identify program and service deficiencies and student achievement deficiencies based upon the Annual Performance Report, the results of the most current review of the factors listed hereinafter and such other state-mandated performance reports as deemed appropriate. Deficiencies shall be determined as follows:

(1) The local school district shall be declared deficient in program and service offerings when one (1) or more of the following accreditation standards are not met.

(a) STANDARD - Legal responsibility:

1. Indicator - The local school district is in compliance with current applicable statutes of the Commonwealth of Kentucky and Kentucky administrative regulations and state board policies.

2. Indicator - The local school district is in compliance with current applicable federal laws and regulations.

(b) STANDARD - Curriculum and learning environment:

1. Indicator - Each school provides a minimum of 175 days of instruction.

2. Indicator - Each school provides a minimum of six (6) hours of instructional time per day.

3. Indicator - Each school is in compliance with the requirements in the Program of Studies in Kentucky Schools, K-12, pursuant to 704 KAR 3:304.

4. Indicator - Each school has a written plan for implementing the program of instruction for grades K-12.

5. Indicator - Opportunities are provided for citizens' groups to participate in the following:

a. Curriculum study;
b. Budget planning;
c. Co-operative evaluation; and
d. Accreditation study.

6. Indicator - The school has developed specific plans and procedures assuring accountability to the local board and to the public.

7. Indicator - Quality textbooks with current content and provided in adequate quantities to meet classroom needs.

8. Indicator - The school has sufficient materials and equipment available to implement the curriculum.

(c) STANDARD - School staff and administration:

1. Indicator - All professional personnel hold appropriate certificates for positions and/or assignments. (Each vocational staff member has the required work experience specific to the program being taught.)

2. Indicator - All teachers are teaching in their major or minor field or specific areas of concentration.

3. Indicator - The local district has established and implemented procedures for evaluating all certified personnel based on the quality of their performance.

(d) STANDARD - Responsible pupil conduct: Indicator - Pupils, parents, teachers, administrators, and school board members are involved in the development of a code of pupil conduct and attendance based on assessed needs which is approved by the local school board; which is in compliance with state and federal law; and which contains a system by which all pupils, parents, and faculty members are informed annually of the pupil code and its provisions.

(e) STANDARD - Financial support and budget: Indicator - The budget provides for adequate

funding of all required accrediting standards.

(2) The local district shall be declared deficient in program and service offerings when one (1) or more of the following planning and reporting standards are not met;

(a) STANDARD - Master Educational Improvement Plan. Indicator - The local school district shall prepare and implement the Master Educational Improvement Plan established jointly by the district and the Kentucky Department of Education and approved by the local board of education.

(b) STANDARD - Annual Performance Report.

1. Indicator - The local district shall prepare and submit each year as herein required, the Annual Performance Report to the State Board of Education.

2. Indicator - The local district shall publish the Annual Performance Report in the newspaper with the largest circulation in the county by October 1.

(3) The local school district shall be declared deficient in academic achievement when one (1) or more of the following standards of attainment of competencies are not met: STANDARD - Student Academic Performance.

(a) Indicator - Students in grades 3, 5, 7, and 10 shall score at or above the national average of fifty (50) normal curve equivalency on the total battery of the Comprehensive [California] Test of Basic Skills.

(b) Indicator - Students in grades K-12 shall achieve on the Kentucky Essential Skills Test an academic performance level to be established by the State Board of Education and filed as an amendment to this regulation in the five (5) essential skills areas on the Kentucky Essential Skills Test.

(4) The local school district shall be declared deficient in product goals when one (1) or more of the following school district outcome standards are not met:

(a) STANDARD - Student Attendance.

1. Indicator - The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. Local school districts achieving a percent of attendance of more than ninety-three and five-tenths (93.5) but less than ninety-six (96) shall be deemed in a satisfactory range and shall include in the Master Educational Improvement Plan a specific goal focused on improving student attendance. The goal shall include both process and product objectives which establish specific action, time frames, and outcomes that systematically move the district toward achieving ninety-six (96) percent or better student attendance.

Local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance shall be deemed deficient and shall include in the Master Educational Improvement Plan a specific goal focused on improving student attendance. The goal shall include both process and product objectives which establish specific actions, time frames, and outcome that systematically move the district toward achieving ninety-six (96) percent or better student attendance. In addition local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance shall as a minimum achieve the following percentage improvements in attendance each year by range groupings in which they fall for that year:

Below ninety (90) percent - the difference between ninety (90) percent and the district's current percent of attendance;

Over ninety (90) percent but less than ninety-two (92) percent - two (2) percent;

Over ninety-two (92) percent but less than ninety-three and five-tenths percent - one (1) percent.

Any local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with subsection (2) of this section.

(b) STANDARD - Student Dropout.

1. Indicator - The dropout rate shall be defined as the annual percentages of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6, W7, W10, and W11.

Local school districts with a dropout percentage of more than three and five-tenths (3.5) percent but less than five and five tenths (5.5) percent shall be deemed in a satisfactory range and shall include in the Master Educational Implementation Plan a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less.

Local districts with a dropout percentage greater than five and five-tenths (5.5) percent shall be deemed deficient and shall include in the Master Educational Improvement Plan a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less. In addition, local districts with a dropout percent in excess of five and five-tenths (5.5) percent shall as a minimum achieve the following percentage improvements in reducing dropouts each year by the range groupings in which they fall for that year:

Over eight and five-tenths (8.5) percent - the difference between eight and five-tenths (8.5) percent and the district's current dropout percentage;

Less than eight and five-tenths (8.5) percent but more than seven (7) percent - one (1) percent;

Less than seven (7) percent but more than five and five-tenths (5.5) percent - seventy-five hundredths (.75) percent.

A local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with Section 2(2) of this regulation.

Section 3. (1) To correct deficiencies as defined by this regulation and meet other statutory requirements, each local board of education shall prepare and submit to the State Board of Education for approval, by October 15, 1985, a Master Educational Improvement Plan. The Master Educational Improvement Plan shall include as separate components the following: Part I, a plan for addressing accreditation deficiencies; Part II, a plan for addressing deficiencies in academic performance on state

mandated tests; Part III, a plan for addressing the district personnel in-service needs (to be submitted by July 15 [May 1] annually); Part IV, a plan for addressing the deficiencies identified as a result of the district's financial analysis; and Part V, such other components as necessary to correct deficiencies identified in other program and performance areas. The Master Educational Improvement Plan shall include specific timelines for correcting each deficiency and shall designate the individuals responsible for correcting each deficiency. The Master Educational Improvement Plan shall be established jointly by the district and the Kentucky Department of Education and shall be approved by the local board of education and the State Board of Education.

(2) Upon the initial filing and approval of a Master Educational Improvement Plan, the contents thereof shall supersede the separate component reports then on file.

Section 4. (1) Each district shall report to the Kentucky Department of Education by September 15 of each school year, its progress in correcting the deficiencies addressed in its Master Educational Improvement Plan. The Kentucky Department of Education shall identify those districts failing to make satisfactory progress in correcting deficiencies. The progress reports of the identified districts and such other reports as may be requested shall be reviewed by the Educational Improvement Advisory Committee which shall recommend to the Superintendent of Public Instruction for State Board action, those districts which are "educationally deficient" and which should be provided with technical assistance by the Kentucky Department of Education. Satisfactory progress shall be defined relative to "educationally deficient," as the district's compliance with and adherence to the timelines established in the approved Master Educational Improvement Plan which shall be submitted on an annual basis until the district is cleared of deficiencies.

(2) Where timelines established in a Master Educational Improvement Plan require remedial action by a district prior to the submission of a following year's progress report, the Superintendent of Public Instruction shall monitor such compliance and may recommend declarations of educational deficiency to the State Board of Education, where compliance is not accomplished, without recommendation or consideration by the Educational Improvement Advisory Committee.

Section 5. Local school districts failing to meet or make satisfactory progress toward correcting deficiencies in program and service standards and product standards, after having received technical assistance from the Kentucky Department of Education, shall be subject to direct management intervention by the State Board of Education, as defined by KRS 158.584(4). Satisfactory progress shall be defined as the district's compliance with and adherence to the timelines established in the approved Master Educational Improvement Plan.

Section 6. Subsequent to direct management intervention by the State Board of Education, if the local district still does not meet established timelines for correcting deficiencies, removal from office of a member or members of the local board or the superintendent or other school district personnel, pursuant to KRS 156.132 to 156.136, may be pursued by the state board.

Section 7. A district that has been declared an educationally deficient district by the state board shall be notified of such declaration in writing. At such time as an educationally deficient district shall be cleared by the Kentucky Department of Education of all deficiencies contributing to the declaration of educational deficiency, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall notify such a district in writing.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: H. G. Marks
(1) Type and number of entities affected: 180 local school districts, changes due date for in-service plans from May 1 to July 15 annually.
(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:
(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:
(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:
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:035. Annual in-service plan.

RELATES TO: KRS 156.095, 157.390, 158.070
PURSUANT TO: KRS 156.095, 157.390, 158.070
NECESSITY AND FUNCTION: KRS 156.095 authorizes the Department of Education to establish, direct, and maintain a state-wide program of in-service teacher training, with relevant purposes of such a program being the improvement of the leadership qualities and professional competence of principals and supervisors and for such other services designated by the State Board of Education for the improvement of instruction. KRS 157.390(2)(a) allows the state board to approve the use of extended employment days; and KRS 158.070 requires the state board to adopt regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for in-service activities for the professional staff. This regulation implements these duties and powers by interpreting what in-service education consists of and by requiring each local district to have approved annually a master in-service education plan by which it is to be guided in providing suitable in-service training programs and in requiring all instructional leaders to participate in the state-wide training program implemented under KRS 156.101.

Section 1. In-service education shall mean any training of school personnel to prepare them to satisfy a need of the school system. The data, skills, and concepts comprising the substance of the training programs are determined by deficiencies in the instructional, administrative and other certified personnel of the school system.

Section 2. Each local district board of education shall annually by July 15 [May 1], submit to the State Department of Education for approval a master in-service education plan. The plan shall include the following components:
(1) Name of local school district;
(2) Name of in-service education coordinator;
(3) Names of local school district's in-service education committee, which shall be a representative body of all areas or levels of educational personnel within the local school district;
(4) Description of needs assessment, including a brief description of procedures implemented to determine how the district's in-service education needs were assessed;
(5) Statement of district's instructional improvement goal(s), which shall be based on identified needs and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of such instructional leaders. Such training hours for instructional leaders may be completed as a part of the state-wide program for such, either during the regular school term or as an approved use of extended employment;
(6) Statement of district's in-service education objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goal(s) and shall include but shall not be limited to the completion of the above-defined requisite training hours for all instructional leaders;
(7) Description of recordkeeping system and procedures, including an indication of the participation of educational personnel in in-service education activities; and
(8) Description of evaluation, including:
(a) A summary of how in-service education programs implemented and operated by individual local school districts will be evaluated; and
(b) A summary of how the implementation of the master in-service education plan will be evaluated.

Section 3. When implementing in-service education programs under KRS 158.070, each local school district shall adhere to its approved master in-service education plan as developed with technical assistance provided from the Department of Education.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: H. G. Marks
(1) Type and number of entities affected: 180 School Districts.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Changes the due date for in-service plan from May 1 to July 15.
(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:
(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:
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:290. Chapter 1, ECIA [Title I, ESEA] annual program plan.

RELATES TO: KRS 156.010, 156.031 [156.030], 156.035, 156.070
PURSUANT TO: KRS 156.031, 156.035 [13.082, 156.030], 156.070
NECESSITY AND FUNCTION: This regulation implements the State Board of Education's management and control of common schools [plan approval] and federal statute implementation functions under KRS 156.031, 156.035, [156.030] and 156.070, [156.035] relative to federal funds received under Chapter 1 of the Education Consolidation and Improvement Act (formerly Title I of the Elementary and Secondary Education Act).

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.035, the Chapter 1, ECIA [Title I, ESEA], Program Plan for three (3) fiscal years ending September 30, 1988 [1982], is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. This document shall be known as the State Plan for Chapter 1, ECIA [Title I, ESEA], revised March 5 [13], 1985 [1979], copies of which may be obtained from the Division of Compensatory Education, and it shall remain in effect for all funds until July 1, 1988 [1982], and between July 1 and September 30, 1988 [1982], for all funds obligated or encumbered by June 30, 1988 [1982].

Section 2. Local educational agency program applicationsmust be authorized by the local board of education prior to submission to the Kentucky Department of Education, and such applications must be submitted on the Chapter 1, ECIA Project Application Form, which is incorporated herein by reference and copies of which may be obtained from the Division of Compensatory Education.

Section 3. Local school district subgrantees shall submit monthly financial reports to the Department of Education by the fifteenth day of the next succeeding month in order to entitle such subgrantees to timely monthly disbursements of funds by the end of the then next succeeding month for which funds are to be advanced. Such reports shall be submitted on the Monthly Financial Report Form, which is incorporated herein by reference and copies of which may be obtained from the Division of Compensatory Education.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: LEAs may claim indirect costs as per indirect costs formula approved by Kentucky Department of Education.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: LEAs must file monthly financial reports.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: SEA will generate approximately $1,500,000 for administration over three year period. The affected LEAs will generate approximately $150 million over a three year period.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no allowable alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering was not possible under federal law providing these funds.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:292. Chapter 1, ECIA Migrant Plan.

RELATES TO: KRS 156.010, 156.035, 156.070
PURSUANT TO: KRS [13.082,] 156.035, 156.070
NECESSITY AND FUNCTION: In accordance with Section 435 of the General Education Provisions Act and Section 564 of the Education

Consolidation and Improvement Act of 1981, the Department of Education, when applying to the U.S. Department of Education for participation in programs for migratory children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This regulation, through adoption of the migrant plan developed by the Department of Education, implements the State Board of Education's duties to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of migratory children funds.

Section 1. The Chapter 1, ECIA Migrant Education Annual Program Plan for fiscal year ending September 30, 1986 [1985], such to become effective July 1, 1985 [1984], is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. Copies of this plan may be obtained from the Division of Compensatory Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 2. The Chapter 1, ECIA Migrant Plan for Fiscal Year 1985 [1984], ending September 30, 1985 [1984], which is filed herewith and incorporated by reference, shall remain in effect for all funds until July 1, 1985 [1984], and between July 1 and September 30, 1985 [1984], for all funds obligated or encumbered by June 30, 1985 [1984].

Section 3. Local educational agency program applications must be authorized by the local board of education prior to submission to the Kentucky Department of Education.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: LEAs may claim indirect costs as per indirect costs formula approved by Kentucky Department of Education.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: LEAs must file monthly financial reports.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: SEA files annual financial report to U.S.D.E.
(3) Assessment of anticipated effect on state and local revenues: SEA will generate approximately $26,000 for administration. The affected LEAs will generate approximately $2.6 million.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no allowable alternatives.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering was not possible under federal law providing these funds.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:325. Effective Instructional Leadership Act.

RELATES TO: KRS 156.101
PURSUANT TO: KRS 156.070, 156.101
NECESSITY AND FUNCTION: KRS 156.101 requires the State Board of Education to establish specific criteria for implementing a statewide instructional leader improvement program for employees of the public schools holding valid certificates and performing the responsibilities as principal, assistant principal, supervisor of instruction, guidance counselor or director of special education. This regulation establishes and sets criteria for such a program.

Section 1. By July 14, 1986, and every two (2) years thereafter, each instructional leader employed by the public schools of the Commonwealth shall participate in an intensive and continuing training program of no less than forty-two (42) participant hours of instruction approved by the State Department of Education. Completion of the required participant hours shall be reported to the local school district and to the State Department of Education. Failure to participate shall result in a one (1) year probation. Those certified as instructional leaders on or after July 14, 1984, who fail to complete the training during the probationary period, shall have their administrative certificates revoked.

Section 2. (1) Participation in the program is required for all those certified and employed as instructional leaders. Under the provisions of Accreditation Standards (Standard V, Compliance Indicator 5) and amendments to 704 KAR 3:035

(annual in-service education plan) local school districts are required to develop a plan for instructional leadership training as part of their Master In-service Education Plan. Districts which do not ensure that their instructional leaders obtain the required participant hours shall be cited for an accreditation deficiency.

(2) The approval of specific training for instructional leaders, as well as the selection of approved providers of such training may be determined by the superintendent of the local district.

(3) Every two (2) years each local school district must send a verification form to the Kentucky Department of Education, recording the names of all instructional leaders, their position titles, their social security numbers, the dates they entered the two (2) year cycle, and the number of hours of training obtained during the two (2) year cycle.

(4) All provider rosters, participant verification forms and certificates must be kept on permanent file by each local district for each participant. In the event that a participant changes districts, his/her original file should be sent to him/her and a duplicate retained in the original district.

Section 3. (1) Instructional leaders shall participate in a training program designed to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth. The State Board of Education may approve agencies or institutions, defined hereinafter as providers, to design, implement, and evaluate such training. Training programs approved by the State Board of Education shall be:

(a) Intensive and designed specifically for instructional leaders. To meet this criterion, a program should be of at least twelve (12) contact hours in duration with no instructional leader applying more than one (1) program of less than twelve (12) hours toward the required forty-two (42). Participation should occur during the contract period including extended employment, if applicable. Training should be scheduled so as to minimize disruption of the instructional program of the district. Participant hours exclude non-training or contact time.

(b) Competency-based, specifying instructional leadership competencies to be mastered by participants. Competencies may have general applicability for instructional leaders or may be role-specific. Based on identified needs, the department may require specific training.

(c) Comprehensive in nature and shall meet identified needs. Needs shall be identified as described in the program content, Section 4 of this regulation. To meet the criterion of comprehensiveness, a program must contain the pertinent inter-related aspects of a broad competency area. This requirement shall not preclude approved sub-contracting by providers for program components.

(d) Characterized by follow-up activities to document the application of acquired competencies. To the optimum extent possible, these activities should occur on the employment site.

(e) Evaluated in terms of program content, instructional processes, and impact upon participants. Specifically, participant application of competencies shall be verified by random sampling utilizing local school district provider, and participant data. Evaluation of the training shall include, but not be limited to, participant pre- and post-testing of the specific instructional leadership competencies.

(f) The conferences of established professional education organizations shall be approvable for up to six (6) hours of credit toward the forty-two (42) hours required of instructional leaders every two (2) years. Such conferences must be submitted to the Kentucky Department of Education and the Kentucky State Board of Education for approval prior to the date of the conference. When approved by the Kentucky State Board of Education, instructional leaders are to be awarded certificates by their local district upon verification of attendance.

(2) The two (2) year cycle to which a training program will be applied is determined by the date on which the last contact hour of a training program occurs. The two (2) year cycle is divided into four (4) quarters for the purpose of prorating the forty-two (42) hour requirement of one who may become a participant after the beginning date of a two (2) year cycle. The quarters and hour requirements are as follows:

(a) July 1, 1984 - December 31, 1984 - forty-two (42) hours by July 14, 1986;

(b) January 1, 1985 - June 30, 1985 - thirty-six (36) hours by July 14, 1986;

(c) July 1, 1985 - December 31, 1985 - twenty-four (24) hours by July 14, 1986; and

(d) January 1, 1986 - June 30, 1986 - twelve (12) hours by July 14, 1986.

(3) On or before August 1, 1986, a participant's verification of attendance at approved Effective Instructional Leadership Training sessions and programs and copies of program certificates must be recorded with his/her district.

Section 4. The training program content shall consist of specific competencies consistent with the following definition of instructional leadership: Instructional leadership is the process of encouraging and modeling appropriate academic expectations of students and teachers in a positive school climate with affective, physical, and social needs to be considered as they relate to the cognitive development of students. The leadership competencies for the improvement of instruction for children and youth relate to an understanding of the teaching/learning process as well as to the supportive and evaluative functions of the instructional leader.

Section 5. Identification of needs will provide the basis for the definition of specific instructional leadership competencies to be addressed within the parameters of the above definition. The Department of Education shall conduct a state-wide assessment of the training needs of instructional leaders every two (2) years. The results will be provided to the local districts to be used in determining training program content. Local districts and cooperatives may supplement the state-wide assessment program.

Section 6. The provider of the training

program shall:
(1) Develop programs which meet the criteria identified above;
(2) Select program faculty who have adequate, pertinent training/education, appropriate experience, and the ability to instruct effectively;
(3) Meet identified needs consistent with the definition of instructional leadership cited in Section 4 of this regulation;
(4) Determine eligible participants as identified by the superintendent of their LEA;
(5) Identify in all informational literature the two (2) year cycle for which approval is granted and the specific category(ies) of instructional leader for which training is approved;
(6) Conduct training as set forth in its proposal and as approved by the Department of Education;
(7) Award participants Kentucky Department of Education certificates of attendance and document, through an attendance roster for each training session, participation of instructional leaders to the local district superintendent and the Department of Education; and
(8) Evaluate the training in terms of its content, instructional processes and impact upon the professional behavior of participants.

Section 7. The State Board of Education, upon recommendation of the Superintendent of Public Instruction, shall approve training providers, and the Department of Education shall maintain and distribute a list of approved providers.

Section 8. (1) Approval shall be granted for a period of up to two (2) consecutive years. The Superintendent of Public Instruction may revoke such approval if the provider does not implement the approved training program.
(2) Determination of approval as a provider will be based upon:
(a) Submission of a provider's training program proposal within sixty (60) days prior to the State Board of Education meeting at which approval is requested;
(b) Specific program criteria;
(c) Program content addressing specified competencies of instructional leadership and specific categories of instructional leaders identified in training proposals;
(d) In order to protect bona fide institutions and organizations and to protect citizens of the Commonwealth from fraudulent practices, unfair competition and substandard educational training programs, the Kentucky State Board of Education shall require that a provider seeking program approval meet the following criteria:
1. An established organizational structure including a legally chartered or organized status or an interagency agreement;
2. Legally appropriate officers and/or a governing body, membership representative of the education profession, and a verifiable domicile; and
3. A record of effective sponsorship of in-service activities.
(e) Local districts and educational cooperatives may qualify as providers.

ALICE McDONALD, Superintendent
ADOPTED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.

PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: H. G. Marks
(1) Type and number of entities affected: 3000 school administrators; 180 local districts
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Accept participants' verification at conferences. Give participants certificates.
(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: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were more costly and burdensome, administratively.
(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? No. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 5:050. Public school kindergarten programs and successful completion of kindergarten; accreditation of non-public programs.

RELATES TO: KRS 156.160, 157.312, 157.315, 157.317, 157.360, 158.030, HB 474 (1984 General Assembly [158.090, HB 295 (1982 General Assembly)]
PURSUANT TO: KRS [13.082,] 156.070, 157.315, 157.317, 157.320, 158.030 [157.360]
NECESSITY AND FUNCTION: KRS 157.312 [and 158.090] authorizes public school kindergartens

operated by local school districts; KRS 157.315 and KRS 157.317 require the State Board of Education and the Department of Education to adopt regulations defining and prescribing the criteria for kindergartens in the common schools and a statewide kindergarten program to be operated in such; KRS 157.360 requires [allows] the Superintendent of Public Instruction to allot Foundation Program kindergarten units to local districts [under regulations of the State Board]; KRS 158.030 sets forth the kindergarten entrance age requirements and requires successful completion of kindergarten as a prerequisite for first grade enrollment in the public schools, beginning in 1986-87; [and] HB 474 (the Budget Bill) [295] passed by the 1984 [1982] General Assembly [(the Budget Bill)] requires kindergarten units to be allotted in fiscal years 1985 [1983] and 1986 [1984] on the basis of one (1) for every two (2) classes with twenty-five (25) pupils in ADA; and KRS 156.160 allows non-public schools to voluntarily comply with common school accreditation standards of the state board and to be certified as so complying. This regulation implements such statutory provisions [sets forth the criteria for public school kindergartens, the procedure for allotment of units, and entrance requirements].

Section 1. Personnel qualified to serve in an approved unit for kindergarten shall hold Kentucky teacher certification as follows:

(1) A Kentucky certificate endorsement for kindergarten teaching; [or]

(2) A Kentucky certificate valid for kindergarten teaching; [or]

(3) A Kentucky certificate valid for elementary classroom teaching initially issued prior to September 1, 1971; or [.]

(4) A Kentucky certificate valid for Early Elementary Grades K-4.

Section 2. (1) State funding for a kindergarten unit for fiscal year 1985-86 [1982-83 and 1983-84] shall be made on twenty-five (25) average daily attendance for the end of the previous school year, and in accordance with KRS 157.560 and the Appropriations Act.

(2) The average daily attendance for programs operating under subsection (2) [or (3)] of Section 3 shall be calculated by dividing the total aggregate days attendance for the year by the actual number of days the school is in session. The average daily attendance for programs operating under subsection (1) of Section 3 [any other plan] shall have the total aggregate days attendance divided by two (2) before the average daily attendance for the year is calculated.

Section 3. Scheduling for a kindergarten unit shall meet one (1) of the following plans[, with a kindergarten school day to consist of six (6) hours unless shortened as provided for in KRS 158.060]:

(1) Conduct half-day session(s) for the school year. The school district may use five (5) three (3) hour sessions per week.

[(2) Conduct all day session(s) for the first semester. Conduct all day session(s) for the second semester. The second semester enrollment shall be children who have not previously enrolled in a kindergarten session in the district.]

(2) [(3)] Conduct alternate full day session(s) all year.

(a) The school district may use alternate sessions of three (3) days a week with one (1) group and two (2) days a week with a second group, with the two (2) groups reversing a day every other week. This may include any of the following schedules:

1. Group 1 - Monday, Tuesday, every other Wednesday, Group 2 - Thursday, Friday, every other Wednesday; (with Wednesday being the alternating day).

2. Group 1 - Monday, Wednesday, every other Friday, Group 2 - Tuesday, Thursday, every other Friday (with Friday being the alternating day).

(b) Any other plan approved by the State Department of Education.

Section 4. Any child who is five (5) years of age or who may become five (5) years of age by October 1 of the school year in which the child seeks to enroll, shall be permitted to enroll in a public school kindergarten. Any child eligible for enrollment and a Kentucky resident on the opening date of school must be enrolled for the current year by the end of the second school calendar month.

Section 5. The public school program shall include appropriate developmental experiences in social living, physical development, emotional growth and stability, creative expression and in academic areas including language, math, spelling, writing, library, [language,] science, [and] social studies, art, music, drama, physical education and health. The program shall provide opportunities and experiences in accordance with each child's level of comprehension and maturation. Pursuant to the authority vested in the State Board of Education the "Kentucky Kindergartens: Guidelines, Recommendations, and Regulations" as adopted on March 5, 1985, is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Copies are to be obtained from the Office of Instruction.

Section 6. (1) The public school program must provide opportunities for each child to attain the competencies to master the essential skills necessary to function in each basic skills area defined by KRS 158.650. The criterion referenced part of the Kentucky Essential Skills Test (KEST) will be given in the spring of the kindergarten year.

(2) Demonstrated competence in the essential skills for kindergarten shall be considered as one (1) criterion by the public school superintendent in recommending promotion to the first grade, but shall not, in and of itself, be a prerequisite for such promotion.

(3) Non-public kindergarten children desiring to enroll in the first grade in the public schools in 1986-87, and thereafter, may be administered the criterion referenced part of the KEST by the applicable public school district, in the spring of the kindergarten year wherever practicable. Demonstrated competence in the essential skills for kindergarten shall be considered, consistent with consideration of such under subsection (2) of this section, relative to any appropriate reassignment to

kindergarten pursuant to KRS 158.140.

Section 7. Successful completion of kindergarten, for purposes of first grade enrollment in the public schools, can be accomplished by any one of the following:

(1) Any child completing a Kentucky public kindergarten program who has been recommended by the school district superintendent for promotion to the first grade, such recommendation to be based upon the teacher's written assessment of the child's competence in the Kindergarten Kentucky Essential Skills as set forth in Section 6(2) of this regulation and the child's social, emotional and physical development;

(2) Any child completing a non-public kindergarten program who meets age requirements who can produce documentation of prior enrollment and regular attendance, and recommendation for promotion to the first grade, subject to any appropriate reassignment to kindergarten pursuant to KRS 158.140, with any such reassignment to be based upon demonstrated competence in kindergarten essential skills as set forth in Section 6(3) of this regulation and upon the child's social, emotional, and physical development;

(3) Any child completing a kindergarten program from another state who can produce verification of enrollment and regular attendance and who has been recommended by that district superintendent for promotion to the first grade, and who was eligible for enrollment in a public school kindergarten program under the laws of such state, subject to any appropriate reassignment to kindergarten pursuant to KRS 158.140; or

(4) Any identified exceptional child completing a public or non-public kindergarten program who can produce documentation of prior enrollment and regular attendance and who meets the age requirements and who can produce recommendation for promotion to the first grade based on written review of the child's individual education plan by the School Based Admissions and Release Committee (SBARC) or its equivalent in a non-public school. Written recommendation must adhere to the provisions of least restrictive environment mandated by the Education for All Handicapped Act.

Section 8. Waiver of the above definition of successful completion of kindergarten shall be given to children transferring from states where kindergarten attendance is not mandatory who meet the first grade entrance age requirement and take the criterion referenced part of the Kentucky Essential Skills Test to determine readiness for first grade.

Section 9. [6.] The facilities of a public school kindergarten program shall be in compliance with the regulations of the Department of Education's Division of Buildings and Grounds.

Section 10. The equipment and instructional supplies of a public school kindergarten program shall be in compliance with "The Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools."

Section 11. [7.] A non-public kindergarten may voluntarily request that it be recognized by the State Board of Education as having complied with accreditation standards required in the public schools. The school will undergo a self-study and an on-site visit by an accreditation committee. The entire cost for this visit will be borne by the school, subject to any appropriate, discretionary use of federal funds for such accreditation. [Non-public kindergartens that voluntarily comply with the State Board of Education's regulations dealing with kindergarten programs may, upon annual written request, receive a statement to that effect from the Superintendent of Public Instruction.]

ALICE McDONALD, Superintendent
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy Crum
(1) Type and number of entities affected: 180 public school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: Local school districts would determine their kindergarten scheduling options. A change from the present schedule could increase their 1985-86 program cost.
2. Continuing costs or savings: Subject to local board of education decisions.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Reporting and paperwork requirements will be maintained at present level.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Printing cost for "Kentucky Kindergartens: Guidelines, Recommendations, and Regulations"
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Reporting and paperwork requirements will be maintained at present level.
(3) Assessment of anticipated effect on state and local revenues: Transportation costs for local boards of education could increase subject to their decision on scheduling options.
(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. Tiering not applied since all school boards (schools) must comply with elementary and secondary kindergarten programs.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:076. Elementary teacher's endorsement for middle grades.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the board. This regulation establishes the endorsement of an elementary certificate for teaching in the middle grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. An endorsement for classroom teaching in the middle grades, five (5) [four (4)] through eight (8), shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who holds a certificate valid for classroom teaching in the elementary grades and who has completed the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel. The endorsement shall also be valid for teaching pupils in grade four (4) who are grouped for instruction in combination classes for grades four (4) and five (5).

Section 2. (1) A one (1) year endorsement for classroom teaching in the middle grades 5-8 [4-8] shall be made upon recommendation of the local school superintendent for an applicant who has completed at least twelve (12) [six (6)] semester hours of credit in the middle grade teaching major [from the approved program of preparation] for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.
(2) As a prerequisite for a one (1) year endorsement, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification, 704 KAR 20:120.
(3) Such a one (1) year certificate endorsement may be renewed for subsequent one (1) year periods upon completion of six (6) semester hours additional credit each year from the approved program.

ALICE McDONALD, Superintendent
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: 24 teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Institutions must file descriptions of the new program with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:078. High school teacher's endorsement for middle grades.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes the endorsement of a high school certificate for teaching in the middle grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. An endorsement for classroom teaching in the middle grades, five (5) [four (4)] through eight (8), shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who holds a certificate valid for classroom teaching at the high school level and who has completed the approved program of preparation for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005. The endorsement shall also be valid for teaching pupils in grade four (4) who are grouped for instruction in combination classes for grades four (4) and five (5).

Section 2. (1) A one (1) year endorsement for classroom teaching in the middle grades 5-8 [4-8] shall be made upon recommendation of the local school superintendent for an applicant who has completed at least twelve (12) [six (6)] semester hours of credit in the middle grade teaching major [from the approved program of preparation] for the middle grades endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) As a prerequisite for a one (1) year endorsement, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification, 704 KAR 20:120.

(3) Such a one (1) year certificate endorsement may be renewed for subsequent one (1) year periods upon completion of six (6) semester hours additional credit each year from the approved program.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: Twenty-four (24) teacher preparation institutions, candidates for teacher certification, local school districts that employ certified teachers.
(a) Direct and indirect costs or savings to those affected: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Institutions must file description of the new program with the Department of Education.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The Department of Education staff must communicate information about the revisions to the teacher education institutions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: None

Tiering:
Was tiering applied? No. There is need for uniform curriculum standards for the certification of teaching personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:080. Provisional middle grades certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate or teaching in the middle grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teaching in the middle grades 5-8 [4-8] shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) [Effective until December 31, 1984 the provisional certificate for teaching in the middle grades 4-8 shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This] Such a certificate issued prior to January 1, 1985, shall be renewed for an additional [a] ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of the planned fifth-year program.

(3) Effective January 1, 1985, the provisional certificate for teaching in the middle grades shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

(4) The provisional certificate for teaching in the middle grades 5-8 [4-8] shall be valid for teaching in grades five (5) [four (4)] through eight (8) and shall be endorsed for grades nine (9) through twelve (12) for any subject assignments in which the teacher holds a regular high school teaching major or minor or area of concentration. The certificate shall also be valid for teaching pupils in grades four (4) who are grouped for instruction in combination classes for grades four (4) and five (5).

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: All applicants for the type of certificate named in this regulation--numbers vary.
(a) Direct and indirect costs or savings to those affected: Not applicable
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: Not applicable
(2) Effects on the promulgating administrative body: Not applicable
(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: Not applicable
(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: Not applicable
(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. Regulation ultimately applies to individual teacher candidates who must satisfy the same curriculum, testing, and internship requirements for certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:210. Substitute teachers.

RELATES TO: KRS 161.020, 161.025, 161.030, 161.100
PURSUANT TO: KRS 156.070, 161.030, 161.100
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other

professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.100 provides for the issuance of emergency certificates under specified circumstances. This regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with other regular certificates and in comparison with emergency certificates.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to applicants who hold a statement of eligibility for a particular type of Kentucky teaching certificate as provided in 704 KAR 20:045, Section 2(6) and (7), or who have previously held any type of Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall be valid only for substitute teaching. The certificate document shall show the type of preparation completed by the teacher and shall be valid for substitute teaching only within the grade levels covered by the validity of the certificate. The Certificate for Substitute Teaching shall not be valid for continuous part-time employment for classroom teaching.

Section 2. Whenever substitute teachers must be employed to serve during the absence of the teacher of record for the position, priority in selection and employment shall be given first to:

(1) Teachers who hold regular certification for classroom teaching and teachers who hold the Certificate for Substitute Teaching, and if no teacher with such certification is available, then;

(2) Except as provided in subsection (3) of this section, persons certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, with such persons to be called in according to the following descending order of categories relating to the amount of college hours completed, but not necessarily according to the number of hours two (2) or more persons within the same category may have:

(a) A Bachelor's degree, then;

(b) At least ninety-six (96) semester hours of college credit, then;

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit; and then, relative to substitute vocational teachers only; [.]

(3) The provisions of 704 KAR 20:120, Sections 1(3) and (4) notwithstanding, persons certified on an emergency basis for substitute teaching in any health, technical, or industrial occupation must have no less than four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

ALICE McDONALD, Superintendent

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche, Wilburn J. Pratt

(1) Type and number of entities affected: 100-200 persons who will be issued the Certificate for Substitute Teaching every year.

(a) Direct and indirect costs or savings to those affected: No change

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Each applicant will be required to file an application for teacher certification and upon approval, the corresponding teaching certificate is issued.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No change

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes requested are to bring substitute teachers in compliance with other certified teacher 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:

(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. Regulation ultimately applies to individual teacher candidates who must satisfy the same requirements for certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Federal Programs
(Proposed Amendment)

709 KAR 1:050. Adult plan.

RELATES TO: KRS 156.035, 156.070
PURSUANT TO: KRS [13.082,] 156.070, 163.030
NECESSITY AND FUNCTION: KRS 156.035 gives the State Board of Education the authority to implement the provisions of any act of Congress appropriating and apportioning funds to the state; KRS 156.070 gives the State Board the management and control of the common schools and all programs operated therein. This regulation adopts the three (3) year program plan for adult education that is required in order to be eligible to receive federal funds under the Adult Education Act.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education, the Kentucky Three-Year Program Plan for Adult Education shall be prepared and approved by the State Board of Education, in accordance with the appropriate federal regulations and guidelines, and submitted to the U.S. Commissioner of Education by June 30 of the appropriate year for approval. The current document, as amended June 22, 1982, is incorporated by reference and hereinafter shall be referred to as the Three-Year Program Plan for the years July 1, 1985, to June 30, 1988 [July 1, 1982 to June 30, 1985]. Copies of the Three-Year Program Plan may be obtained from the Adult Education Unit, State Department of Education.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon Darling
(1) Type and number of entities affected: 180 school districts
(a) Direct and indirect costs or savings to those affected:
1. First year: Federal grant allocated to state for flow through to local districts on competitive basis.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Final report annually.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Federal grant matched by state funds (10%).
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Final report annually.
(3) Assessment of anticipated effect on state and local revenues: Local school districts will receive funds to operate adult education programs subject to application approval.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal grant requires specific methods to administer plan.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. N/A.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

709 KAR 1:060. Standard for academic programs for post-secondary and adult students.

RELATES TO: KRS 163.030
PURSUANT TO: KRS Chapter 13A [13.082]
NECESSITY AND FUNCTION: KRS 163.030 gives the State Board of Education all necessary power and authority in administering the state's vocational education program. This regulation is necessary in order to set a statewide standard for academic progress for post-secondary and adult students in the state's vocational technical schools and area vocational education centers to meet in order to remain in good academic standing in such schools.

Section 1. Any post-secondary or adult student enrolled in a state operated vocational school shall maintain satisfactory progress toward completion of the prescribed competencies based upon the student's skill development. The quality of the student's performance shall include the quality of any shop or laboratory work, technical knowledge, attitude, conduct, and completion of assigned tasks and learning activities [, given the individual's capabilities].

Section 2. Post-secondary and adult students must maintain an overall "C" average, i.e., seventy (70) percent passage, in each requirement for completion of an occupational program [in order to stay in a program]. A student who falls below a [cumulative] "C" average in any of the requirements at the end of a specified grading period shall be placed on academic probation for not less than one (1) grading period of six (6) weeks or more and not more than two (2) grading periods. [a reasonable period of time designated by the principal. The probationary period shall be not less than one grading period of six (6) weeks or more, and

shall not exceed two (2) grading periods.] Remedial assistance shall be offered the student in those instructional areas below the "C" in an effort to allow them to proceed in the program. [, and] If satisfactory academic progress is still not being made at the end of the probationary period, the student shall be academically expelled, without the right of formal hearing, by the principal.

Section 3. (1) Clear and specific notice of the academic progress policy set forth herein shall be included in each school's student handbook, which shall be disseminated to each student upon his entrance into a vocational program, and each teacher shall clearly explain to each student the grading criteria to be used, at the outset of a student's participation in that teacher's course or program.

(2) Any student being placed on academic probation shall be clearly advised of such by the school, the duration of such probation, and the consequences of continued failure to make satisfactory academic progress.

Section 4. (1) A student expelled for academic reasons, shall, unless extenuating circumstances or the facts of individual cases warrant shorter expulsions, be re-admitted to school on the basis of waiting list priorities at the time of expulsion or on the basis of a ninety (90) day expulsion (excluding the month of July), whichever is longer.

(2) A school shall not be obligated to, but may, re-admit a student after a second academic expulsion.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of education, first Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Audrey Carr
(1) Type and number of entities affected: 17 State Vocational Technical Schools/5 Health Complexes
(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: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Some recordkeeping but no more than should be expected by an effective teacher.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No better method could be determined. Regulation as drafted appears to be best for those affected.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:020. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS Chapter 338
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1984 [1981], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR Part 1910.1 shall read as follows:
"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:
(a) "Act" means KRS Chapter 338.
(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National Consensus Standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

(3) 29 CFR 1910.20 "Access to employee exposure and medical records" is amended as follows:

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but no longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(b) 29 CFR 1910.20(e)(1)(ii) is amended to read "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

(d) 29 CFR 1910.20(g)(1) is amended to read "Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform each employee exposed to toxic substances or harmful physical agents of the following:"

(e) 29 CFR 1910.20(g)(2) is amended to read "Each employer shall make readily available to employees any informational materials concerning this standard which are provided to the employer by the Assistant Secretary of Labor for Occupational Safety and Health."

(4) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(5) 29 CFR 1910.95 "Hearing Conservation Program" is [paragraphs (c) through (p) and appendices A, B, C, D, E, F, G, H, and I as published in the Federal Register, Volume 48, Number 46, March 8, 1983 and Volume 48, Number 125, June 28, 1983 are adopted by reference and] amended as follows:

(a) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1910.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

1. Sound Pressure Output Check.

a. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

2. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

3. Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading dB
500.....	11.5	81.5
1000.....	7	77
2000.....	9	79
3000.....	10	80
4000.....	9.5	79.5
6000.....	15.5	85.5
8000.....	13.0	83.0

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading dB
500.....	13.5	83.5
1000.....	7.5	77.5
2000.....	11	81.0
3000.....	9.5	79.5
4000.....	10.5	80.5
6000.....	13.5	83.5
8000.....	13.0	83.0

(6) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(7) 29 CFR 1910.106 "Flammable and combustible liquids" is amended as follows:

[(a)] 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

[(b) Revisions to 29 CFR 1910.106(g)(2) and 1910.106(g)(3)(vi)(a) and (b) as published in the Federal Register, Volume 47, Number 173, Tuesday, September 7, 1982 are adopted by reference.]

(8) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980."

(b) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973."

(c) 29 CFR 1910.134(g) shall read: Identification of Air-Purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs a and b of this paragraph, and subparagraph (c) of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

(a) For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)

_____
(Name of atmospheric contaminant)

(b) For respiratory protection in atmospheres containing

(Type of particulate contaminant)

(c) Do not use in atmospheres containing less than 19.5% oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(d) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(9) 29 CFR 1910.141(c)(2)(i) shall read as follows: "(1) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(10) 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

"(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health."

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first-aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First-aid supplies approved by the consulting physician shall be readily available."

"(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

(11) 29 CFR 1910.156(a)(2) "Application" is amended to read: "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

[(12) 29 CFR 1910.177 "Servicing Single Piece and Multi-Piece Rim Wheels" as published in the Federal Register, Volume 49, Number 29, February 3, 1984 is adopted by reference.]

(12) [(13)] 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

"This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(13) [(14)] Subparagraph 29 CFR 1910.252(a)(6)(iv), (d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

[(15) Corrections to 29 CFR 1910 Subpart S "Electrical" as published in the Federal Register, Volume 46, Number 152, August 7, 1981 are adopted by reference.]

[(16) Amendments to 29 CFR 1910.401(a)(2)(iv) and 29 CFR 1910.402 "Commercial Diving Operations" as published in the Federal Register, Volume 47, Number 228, November 26, 1982 are adopted by reference.]

(14) [(17)] 29 CFR 1910.1001 "Asbestos" is

amended as follows:

(a) 29 CFR 1910.1001(d)(2)(iv)(a) is amended to read:

"The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, which in incorporated by reference herein."

[(b) 29 CFR 1910.1001 (k) as published in the Federal Register, Volume 48, Number 215, November 4, 1983 is adopted by reference.]

[(18) Amendments to 29 CFR 1910.1002 "Coal Tar Pitch Volatiles" as published in the Federal Register, Volume 48, Number 15, January 21, 1983 are adopted by reference.]

(15) [(19)] 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(16) [(20)] Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

"Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(17) [(21)] 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

[(a) Revisions as published in the Federal Register, Volume 46, Number 238, Friday, December 11, 1981 are adopted by reference.]

[(b) Revisions published in the Federal Register, Volume 47, Number 219, November 12, 1982, and Volume 48, Number 46, March 8, 1983 are adopted by reference.]

(a) [(c)] "Table 1 - Implementation Schedule" is amended to read:

[(22) 29 CFR 1910.1200 "Hazard Communication" as published in the Federal Register, Volume 48, Number 228, November 25, 1983 is adopted by reference.]

[(23) 29 CFR Part 1910, "Revocation of Advisory and Repetitive Standards" as published in the Federal Register, Volume 49, February 10, 1984 is adopted by reference.]

TABLE 1 - Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 ug/m³	100 ug/m³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, NonFerrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

[1] Includes ancillary activities located on the same worksite.

2. On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

JOHN CALHOUN WELLS, Secretary

APPROVED BY AGENCY: March 13, 1985

FILED WITH LRC: March 15, 1985 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing concerning these regulations has been scheduled for April 25, 1985, at 1 p.m. (EST), to be held at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Those interested in attending should provide written notice to Mr. Guy Schoolfield, Kentucky Labor Cabinet, Division of Education and Training, OSH Technical Support Branch, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield

(1) Type and number of entities affected: This regulation affects approximately 105 hospitals throughout the Commonwealth utilizing ethylene oxide as a sterilant.

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

1. First year: The average cost per employee directly exposed to ethylene oxide is estimated to be $267.00.

2. Continuing costs or savings: The annual cost per employee directly exposed to ethylene oxide is estimated to be $267.00.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Rate of employee turnover.

(b) Reporting and paperwork requirements: No reports or records are required by this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings to the Kentucky OSH Program will occur as a result of this amendment.

(b) Reporting and paperwork requirements: No additional reports or records are required by this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(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: No regulations, rules, or policies, conflict, overlap, or duplicate this regulation.

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The Occupational Safety and Health Program targets its scheduled inspections toward those industries or firms that pose higher risks to worker health and safety or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:030. Adoption of 29 CFR Part 1926.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS Chapter 13A [13.082]
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to adopt by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926 of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions:

(1) 29 CFR Part 1926.1 shall read as follows:
The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1926.103 "Respiratory Protection" Table E-4 is amended as follows:

Table E-4
Respirator Protection Factors[a]

Type of Respirator	Permitted for Use in Immediately-Dangerous-to-Life-or-Health Atmosphere	Permitted for Use in Oxygen-Deficient Atmosphere[f]	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, quarter-mask or half-mask facepiece[b,c]	No	No	10	As measured on each person with maximum of 100.
Vapor-or gas-removing, quarter-mask or half-mask facepiece[c]	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j] whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece[b,c]	No	No	10, or maximum use limit or cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,[i,j], whichever is less.
Particulate-filter, full facepiece[b]	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum vapor or gas,[i,j], whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece[b]	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less. 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas,[i,j] whichever is less.
Powered particulate-filter, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	

Powered vapor- or gas-removing, any respiratory-inlet covering[c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas[i,j] whichever is less.
Powered combination particulate-filter and vapor- or gas-removing, any respiratory-inlet covering[b,c,d]	No	No (yes, if escape provisions are provided[d])	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas,[i,j], whichever is less.
Air-line, demand, quarter-mask or half-mask facepiece, with or without escape provisions[c,e]	Yes[f]	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values	
Air-line, demand, full facepiece, with or without escape provisions[e]	Yes[f]	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values	
Air-line, continuous-flow or pressure-demand type, any facepiece, without escape provisions[c]	Yes[f]	No	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Air-line, continuous-flow or pressure-demand type, any facepiece, with escape provisions[c,e]	Yes[g]	Yes	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus[h].
Air-line, continuous-flow, helmet, hood, suit without escape provisions	Yes[f]	No	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Air-line, continuous-flow, helmet, hood, or suit, with escape provisions[e]	Yes[g]	Yes	N/A	N/A	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus[h].

Hose mask, with or without blower, full facepiece	Yes[f]	No	10 respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.	As measured on each person, but limited to the use of the
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece[c]	Yes[f]	No	10 values.	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH)
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full facepiece or mouthpiece/nose clamp[c]	Yes[f] (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100 health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouthpiece/nose clamp[c]	Yes[g]	Yes	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.	N/A
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

[a] A respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

[b] When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

[c] If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

[d] If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the

pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

[e] The escape provision shall be an auxiliary self-contained supply of respirable air.

[f] "Oxygen deficiency--not immediately dangerous to life or health"--an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

[g] "Oxygen deficiency--immediately dangerous to life or health"--an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

[h] The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

[i] The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

[j] Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

(3) 29 CFR 1926.200(g)(2), .201(a)(2) and .202 shall be amended to require signs, signaling and barricades to conform to specifications as set forth in ANSI D6.1 "Manual of Uniform Traffic Control Devices for Streets and Highways" (1978 Edition).

(4) 29 CFR 1926.400(h)(3)(i), (vii) shall read: "shall be readily available for inspection."

(5) 29 CFR 1926.451(a)(4) shall read as follows: Guardrails and toeboards shall be installed on all open sides and ends of platforms more than ten (10) feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Toeboards shall not be required on the loading side of platforms which are loaded by means of a high lift tractor or fork truck provided that employees are prohibited from entering the area beneath the scaffolding where they could be exposed to objects which might fall from the scaffolding. Scaffolds four (4) to ten (10) feet in height, having a minimum horizontal dimension in either direction of less than forty-five (45) inches, shall have standard guardrails installed on all open sides and ends of the platform.

(6) 29 CFR 1926.552(b)(8) of the paragraph on "Material hoists" shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the nominal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.

(7) Revoke paragraph "514--Warning Device" of ANSI B56.1--1969--Safety Standards for Powered Industrial Trucks and adopt paragraph "512--Warning Device" of ANSI B56.1--1975--Low Lift and High Lift Trucks for standard reference as specified in 29 CFR 1926.602(c)(1)(vi): effective July 1, 1979.

(8) The following paragraphs of 29 CFR 1926, Subpart U, Blasting and the Use of Explosives, which were previously adopted by reference, are hereby revised and shall read as follows:

(a) 1926.900(k)(3)(i) The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Commissioner, Kentucky Department of Labor.

(b) 1926.900(k)(4) Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be de-energized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

(c) 1926.900(p) The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of

dimension stone.

(d) 1926.900(r) All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection .906(a) and (r).

(e) 1926.902(d) Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 CFR 177.835(g).

[(f) 1926.903(o) Deleted.]

(f) [(g)] 1926.905(h) Machines and all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, over-burden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the leadwires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.

(g) [(h)] 1926.905(i) No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.

(h) [(i)] 1926.905(k) Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent-charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.

(i) [(j)] 1926.905(n) In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.

(j) [(k)] 1926.906(p) 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 immediate physical and visual supervision of the blaster.

(k) [(l)] 1926.906(q) Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.

(l) [(m)] 1926.906(s) 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.

(m) [(n)] 1926.907(a) The use of a fuse that has been hammered or injured in any way shall be forbidden.

[(o) 1926.910(b) Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. In tunnels, the airborne concentration of toxic dusts and fumes will be maintained at healthful levels by compliance with 29 CFR 1926.800, or by wetting down the muck pile, or by other effective means.]

(9) Amend subparagraph 1926.950(c)(1)(i) to read as follows:

"The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves when necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part, or ....."

JOHN CALHOUN WELLS, Secretary

APPROVED BY AGENCY: March 13, 1985

FILED WITH LRC: March 15, 1985 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing concerning this regulation has been scheduled for April 25, 1985 at 1 p.m. (EST) to be held at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Those interested in attending should provide written notice to Mr. Guy Schoolfield, Kentucky Labor Cabinet, Division of Education and Training, OSH Technical Support Branch, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield

(1) Type and number of entities affected: This regulation will affect approximately 5,000 employers using explosives and performing blasting operations during construction activities.

(a) Direct and indirect costs or savings to those affected: No costs or savings will be incurred by the affected establishments as a result of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional recordkeeping costs will be incurred as a result of this requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings to the Kentucky OSH Program will occur as a result of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reports or records are required by this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.
(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: No regulations, rules, or policies, conflict, overlap, or duplicate this regulation.
(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. The Occupational Safety and Health Program targets its scheduled inspections toward those industries or firms that pose higher risks to worker health and safety or from which the OSH Program has received worker complaints.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:020. Licensing procedures.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline the licensing procedures and requirements.

Section 1. License Required. No person, legal entity, or association shall conduct any quarter horse or appaloosa race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Quarter horse and appaloosa racing and participation therein in the Commonwealth are privileges, not rights, granted only by the commission by license subject to the hereinafter set out conditions precedent. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply therewith shall be grounds for immediate voidance or revocation of such license:
(1) Representations made or with license application are complete and correct.
(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal thereto. All rulings and decisions of the stewards may be appealed to the commission except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during such race, and all such excepted rulings and decisions by the stewards shall be final with no right of review thereof by the commission or courts.
(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge all questions asked by the commission or its representatives pertaining to racing matters.
(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard such horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of such horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for same to conduct a quarter horse or appaloosa race meeting on such days as the commission may deem appropriate, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, or improve the quarter horse and appaloosa industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of

operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in quarter horse or appaloosa racing in the Commonwealth as a horse owner, trainer, jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any narcotic regulation;

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of quarter horses or appaloosas.

(4) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(5) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(6) Person less than sixteen (16) years of age;

(7) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

(8) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(9) Employment or harboring of unlicensed persons required by these rules to be licensed;

(10) Discontinuance of or ineligibility for activity for which license was issued;

(11) Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device, or other applicants other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(12) Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

(13) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;

(14) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(15) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(16) Causing, or attempting to cause, or participation in any way in any attempt to cause the pre-arrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(17) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(18) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing; or association with persons so characterized;

(19) Violation of any rule of the commission, or aiding or abetting any person in the violation of any such rule.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct quarter horse or appaloosa racing in the Commonwealth may apply to the commission for association license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Such application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in

such legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted.

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct quarter horse and appaloosa racing.

(8) Based on the daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse, Appaloosa and Arabian Commission as follows:

From	But Less Than	Daily Licensing Fee
$ 0	$ 75,000	$100
75,000	150,000	150
150,000	200,000	200
over 200,000		300

In the event that the commission allows two (2) racing programs on one (1) day, a separate daily fee for each racing program shall be paid. As used in this section the term "daily mutuel" is understood to be the total gross amount of money bet or wagered by the track's patrons. [Based on their prior year's average daily mutuel handle, all associations and tracks shall pay a daily licensing fee to the Kentucky Quarter Horse and Appaloosa Commission as follows:]

[Previous Year's Daily Mutuel Handle		Daily Licensing Fee
From:	But Less Than	
$ 0	$ 175,000	$ 25.00
175,000	300,000	75.00
300,000	450,000	125.00
over $450,000		250.00]

[As used in this section the term "daily mutuel" is understood to be the total gross amount of money bet or wagered by the track's patrons.]

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 and desiring to participate in quarter horse and appaloosa racing in the Commonwealth may apply to the commission for a license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification will be required of all licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until such applicant has been administered a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of such applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) $25 [20]--Owner license and annual color registration;

(b) $25 [15]--Trainer, jockey, or jockey's agent license;

(c) $25 [10]--Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) $5--Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) $25 [5]--Stable area supplier license

(suppliers of horse feed, tack, medication, or food vendors);

(f) $10 [5]--Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, commission veterinarian, commission chemist, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, association veterinarian, testing laboratory employee, horse identifier, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider;

(g) $10 [5]--Mutuel department employee license, manager, calculator sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(h) $10 [5]--Occupational license. admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting;

(i) $5 [3]--Temporary occupational license for persons to be employed in occupations listed in paragraph (h) above for ten (10) days or less during a calendar year.

Section 8. Licensing Committee. The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative. Such licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. Such licensing committee may issue to a license applicant a temporary permit to participate in the activity for which such license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in quarter horse and appaloosa racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during such calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license and any such renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.

Section 10. Possession of License Required. No person required to be licensed by these rules may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under subsection (9)(b) to (i) shall include a color photograph of the licensee.

Section 11. Applicability of Rules and Rulings to Household. Rules pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 12. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of such intention at least fifteen (15) days before such termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these rules, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: To each racing association licensed to conduct racing based on 96 racing days each for 1985, cost increase will be

$7,200. Cost to individuals licensed to participate in racing on track $5/annually.

2. Continuing costs or savings: Same costs as above depending on number of racing days granted.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Income to commission from racing associations shall increase in first year in sum of $14,400. Increased income as the result of additional licensing fee to individuals is approximately $3,400. The last figure is based on 1984 licenses issued to individuals.

2. Continuing costs or savings: Same as first year depending on dates issued.

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: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: This commission's daily licensing fee was grossly disproportionate and less than the licensing fee of other commissions in this state and intention is to raise additional revenue to make this racing commission self-sustaining.

(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: Daily licensing fees to racing associations are being increased to be more in line with other racing commissions and to increase the revenue of this commission to make it self-sustaining. The individual license fees are being increased to be brought in line with other racing commissions' licensing fees.

Tiering:
Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:030. Racing officials.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline the qualifications, duties, powers and responsibilities of the racing officials.

Section 1. Racing Officials. (1) Persons appointed by the association to serve as racing officials during a race meeting must first be approved by the commission and shall serve only so long as approved by the commission, and shall be under the supervision of the stewards. For purposes of this rule, racing officials shall include those persons serving as steward, racing secretary, assistant racing secretary, clerk of the scales, paddock judge, starter, patrol judge, placing judge, timer, identifier and association veterinarian.

(2) No person while serving as a racing official shall, indirectly or directly, own a beneficial interest in a quarter horse or appaloosa, or jockey contract, or association under his supervision; nor shall cause to be bought or sold, for himself or another, any quarter horse or appaloosa under his supervision; nor shall he buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his supervision; nor shall he wager on any race under his supervision; nor shall he write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associations as such. For the purposes of the above, the following racing department employes shall also be deemed racing officials: assistant starter, jockey room custodian, jockey room employees, valets, outriders.

(3) Racing officials serving in the capacity of stewards, placing and/or patrol judges, clerk of scales, starter and horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which they serve, such examination evidencing corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(4) Any racing official who desires to leave his employment during the race meeting must first obtain permission from the commission; in the event a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission; in the event the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

Section 2. Racing Secretary. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations, and scratches. Among the duties for which the racing secretary and his staff are responsible are:

(1) Safekeeping of registration of certifications and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the racing meeting;

(2) Maintain a record and post daily all subscriptions and nomination fees received for each stake race, amounts received from each owner or trainer, plus added monies and late fees. Said list shall be posted in the racing secretary's office daily, and a copy delivered to the stewards. The racing secretary shall also maintain records of all arrears, jockey's fees, purchase money in claiming races and all other monies received incident to the race meeting and pay over same to persons entitled thereto within fourteen (14) days after race meeting concluded; [Maintaining a record of all stakes fees

received, and all arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the racing meeting and pay over same to persons entitled thereto within fourteen (14) days after race meeting concluded;]

(3) Supervision of the horsemen's bookkeeper's handling of the "horseman's account;"

(4) Daily posting of entries for the benefit of the public as soon as possible after the entries have been closed and declarations have been made;

(5) To assign stall applicants such stabling as he may deem proper after consultation with the stewards, and to maintain a record of arrival and departure of all horses stabled on association grounds;

(6) To publish the official daily program, insuring the accuracy therein of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions, and distance for each race, and current track record for such distance;

(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the full name of the jockey named for each horse together with the weight to be carried;

(e) The saddle cloth number or designation for each horse, and the post position for each horse if there is a variance with the saddle cloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam;

(g) Such other information as may be requested from time to time by the association or the commission.

Section 3. Clerk of the Scales. One (1) racing official shall serve as clerk of the scales who shall be responsible for the security, regulation, and control of the jockeys room, the equipment therein, and personnel permitted access thereto. Among the duties for which the clerk of scales is responsible are:

(1) Weighing out every jockey no later than fifteen (15) minutes prior to the race the jockey is scheduled to ride and recording all overweights which shall immediately be posted and announced to the public before each race;

(2) Weighing in every jockey immediately after the finish of each race and promptly notifying the stewards whether any jockey weighed in more than two (2) pounds underweight;

(3) Safekeeping of all racing colors;

(4) Reporting all color changes or jockey changes from that listed in the official daily program and causing same to be posted and announced to the public before each race;

(5) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(6) Accuracy of the scales and periodic tests thereof;

(7) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any;

(8) All complaints, protests, objections, or disputes submitted to the clerk of the scales shall be immediately transmitted to the stewards, and if the stewards are unavailable, then to the commission.

Section 4. Paddock Judge. One (1) racing official shall serve as paddock judge who shall have general supervision of the paddock and be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race:

(2) Proper identification of all horses entered in each race. The track horse identifier shall be under the supervision of the paddock judge;

(3) Maintaining a written record of all equipment and inspecting all equipment of each horse saddled and reporting any change thereof to the stewards;

(4) Inspection of bandages of a horse; the paddock judge may order such bandages removed or replaced;

(5) Inspection of the feet of each horse to insure that each horse is properly shod;

(6) Paddock schooling of all horses approved for such by the stewards;

(7) Taking such measures as to insure that the saddling of all horses is orderly, open to public view, free from interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence.

Section 5. Starter. (1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal. The starter may employ such assistant starters as he may deem necessary and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race shall come upon the track.

(2) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list which shall be posted in the racing secretary's office listing the names of all horses ineligible to start for want of adequate training leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(3) The starter shall report to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(4) No assistant starter shall handle a horse until instructed to do so by the starter. No assistant starter shall strike or use abusive language to a jockey.

(5) No starter or assistant starter shall accept any gratuity or payment other than his regular salary directly or indirectly, for services in starting a race, nor shall he wager on a race.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse, such record to be made available to the stewards upon request.

(7) The starter shall have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away.

Section 6. Patrol Judges. A race for a distance of 440 yards or less shall have at

least one (1) patrol judge; a race for a distance over 440 yards shall have at least two (2) patrol judges. Racing officials shall serve as patrol judges who shall be stationed in elevated stands at points designated by the stewards to observe the running of each race. Each patrol judge shall have instant radio or telephone communication with the stewards to report observations, particularly as to any suspected foul riding, during the running of each race. Patrol judges shall assist in making up the film list and shall review all patrol films or video tapes before commencement of the next succeeding race program.

Section 7. Placing Judges. Three (3) racing officials shall serve as placing judges who shall occupy a stand directly above the finish line during the running of each race. The placing judges shall take special note of racing colors and distinguishing equipment carried by each horse. The placing judges shall determine the order of the horses as they cross the finish line by consideration of the respective noses of such horses. The placing judges shall cause the numbers of the first four (4) horses to cross the finish line to be flashed on the result board. A photo-finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line; placing judges may request a photo to assist in determining margins of less than a half-length.

Section 8. Timer. A racing official shall serve as timer who shall occupy a stand directly above the finish line during the running of each race and record the official time thereof. The timer shall record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line. An electrical or mechanical timing device approved by the commission may be used as an aid by the timer in determining the official time of each race. The timer shall maintain a written record of fractional and finish times of each race and file same with the racing secretary at the close of each racing day.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen
(1) Type and number of entities affected: Racing secretaries and all horsemen.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
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: 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: Regulation is intended to give the Kentucky Quarter Horse, Appaloosa and Arabian Commission more information as to subscriptions and nominations fees received for stakes races by the Racing Associations in order that the commission can insure that the funds are being deposited in the Horseman's bookkeeper's account.

Tiering:
Was tiering applied? No. This regulation sets up a system so that horsemen and racing officials may be provided with up to date stakes entries by the racing secretary.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:035. Associations.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation outlines the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employes, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain uniform track, weather conditions permitting.

Section 2. Result Boards, Totalizators Required. Each association shall provide and maintain mechanically operated totalizators and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting

gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one or more men qualified to keep said starting gates in good working order whenever said gates are in use, and each association shall provide for periodic inspections of said gates.

Section 4. Stabling. Each association shall be responsible for providing and maintaining fire-resistant barns and stalls in good repair, and in a clean and sanitary condition; each barn and each stall shall be numbered in consecutive order for ready ascertainment of location and identification and adequate drainage therefor shall be maintained. The racing secretary shall submit to the stewards prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race; such locations shall be considered for purposes of these rules "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials, such stands and location thereof to be approved by the commission. Patrol judge stands shall be constructed so the floor thereof shall be at least six (6) feet higher than the track rail.

Section 6. Permanent markers must be located at each standard quarter horse and appaloosa distance as applicable. Distance pole markers and permanent markers must be located where they can be seen clearly from the judge's stand. Each post shall be identified by color: such as, 220 yds., white; 250 yds., blue; 300 yds., yellow; 330 yds., green; 350 yds., red; 400 yds., black; 440 yds., orange; 550 yds., blue and white stripe; 660 yds., yellow and white stripes; 770 yds., green and white stripes; and 870 yds., red and white stripes. In addition, for appaloosa races, markers shall be located at six (6) and six and one-half (6 1/2) furlongs to be painted yellow and white and orange and white, respectively.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities such as showers, toilets, and wash basins, for stable employees. No person shall be permitted to sleep in any stall.

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day, such facilities to include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued at any time by the commission, or by the National Association of State Racing Commissioners.

Section 11. Sanitary Facilities for Patrons. Each association shall on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of such size and construction to handle refuse from stalls. The contents of said manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo-finish Cameras. Each association shall provide and maintain at the finish line two (2) photo-finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo-finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all such photo-finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record with same each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) Such films and video tapes shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any question, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) Such films, or video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. Said ambulances shall be equipped, manned, ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First-aid Room. Each association shall equip and maintain adequate first-aid

facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install and maintain in good working service communication systems between the stewards stand and patrol judges, pari-mutuel department, starting gate, public address announcer, and clerk of the scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high expansion foam fire extinguishers and other equipment as may be recommended by the local fire inspection authority. Each association shall prohibit:

(1) Smoking in stalls, under shed rows, and in feed rooms;

(2) Open fires, oil or gas lamps in stable area; and

(3) Locking of stalls occupied by horses.

Section 20. Telephone Restricted. (1) No association shall permit communication by any electrical, mechanical, manual, or visual method from association grounds of any information pertaining to any race conducted by the association until at least thirty (30) minutes after the last race of the day is declared official; excepting from the effect of this rule such information as may be transmitted by duly accredited members of the news media for the benefit of the public at large.

(2) All telephones and telegraph wires on association grounds shall be closed from fifteen (15) minutes before post time of the first race and remain closed until thirty (30) minutes after the finish of the last race is declared official and no calls or wires shall be allowed to be made or received while such telephone and telegraph wires are closed.

(3) Excepted from the effect of this rule shall be the transmission of information pertaining to racing by duly accredited members of the news media, and the ordinary conduct of business as may be transmitted by members of the commission and its staff or association officials.

(4) No association employee shall furnish, other than to authorized persons, any information with respect to entries, scratches, jockey changes, or track conditions for any race.

Section 21. Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section 22. Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take such measures as to maintain security of horses on association grounds so as to protect from injury due to frightening of or tampering with said horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section 23. Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this rule shall attempt to control or monopolize proper selling to owners, trainers or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Any vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section 24. Ejection or Exclusion from Association Grounds. (1) Associations may eject or exclude any persons, licensed or unlicensed, from association grounds or a part thereof solely of its own volition and without any reason or excuse given therefor, provided, however, such ejection or exclusion is not founded on race, creed, color, or national origin.

(2) Associations shall eject or exclude from association grounds all persons believed to be engaged in a bookmaking activity or solicitation of bets or touting, and a report thereof shall be submitted promptly to the commission, to the stewards, and to the local police.

(3) Associations shall eject or exclude from the stable area on association grounds all persons except those whose presence in the stable area is authorized as:

(a) Persons licensed to conduct an activity, the conduct of which requires the presence of such licensee in the stable area;

(b) Duly accredited members of the news media;

(c) Guests of a licensed owner or licensed trainer physically in the company of such owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, or association security guard, or association public relations department representative.

(4) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards, such reports stating the name of all persons and circumstances involved.

Section 25. Ownership of Associations. Each

association shall file with the commission a revised list of persons whose identity is required by 812 KAR 1:040, immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section 26. Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, and racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section 27. Attendance Report. (1) Each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted; such attendance report shall indicate the daily number of paid admissions and free admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

(3) Tax exempt admission credentials shall not be transferable and associations shall exclude or eject from association grounds any person attempting to use such tax exempt admissions credentials not issued to him by the association.

Section 28. Financial Report. In addition to filing with the commission copies of reports required by KRS 138.530 to be filed with the Department of Revenue on pari-mutuel, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and of its operating statement for such fiscal year with comparison to prior year, the same to be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. Such financial report shall be in such form as may be prescribed from time to time by the commission.

Section 29. Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account," with at all time sufficient funds in such account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. [Withdrawals from] This account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of such account shall be bonded in an amount approved by the commission.

(2) The association shall deposit the total purse money for each day's racing prior to post time of the first race and shall exhibit proof thereof to the stewards. All portions of purse money shall be made available to earners thereof within forty-eight (48) hours (Sundays excluded) after the result of the race in which such money was earned has been declared official; except, however, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to such money in dispute.

(3) All monies received by the association for stakes nominations and subscriptions shall be deposited daily in a separate escrow account to be known as the "Stakes Account" and the association shall exhibit proof thereof to the stewards. This account shall be subject to audit by the commission, and the bookkeeper in charge of said account shall be bonded in an amount approved by the commission.

(4) [(3)] No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom such purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal or transfer of funds affecting such owner's racing account at the close of each race meeting.

Section 30. Outriders. Each association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall wear traditional apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing.

Section 31. Association Veterinarian. (1) Each association shall employ a graduate veterinarian, licensed in Kentucky, experienced in equine medicine and practice, who shall be responsible for inspecting and reporting all horses entered for racing soundness; maintaining and posting in the racing secretary's office a veterinary list of horses ineligible to race because of sickness or unsoundness; control of communicable equine diseases; insect control; sanitary conditions in the stable area, and observe and report all cruel or inhumane treatment of horses to the stewards.

(2) The association veterinarian shall be attendant on the stewards and the racing secretary at scratch time each day, and shall examine such horses as such racing officials may request, and shall make reports to such racing officials as promptly as possible.

(3) The association veterinarian shall be responsible for inspecting every horse entered on the day of the race for which such horse is entered. Such inspection shall be for physical fitness, general conditions, and for any noticeable unsoundness or peculiarities that may affect the racing condition of the horse or be considered for scratching a horse on a muddy or sloppy track. Such pre-race examinations shall be recorded on a health record for every starter at the race meeting.

(4) The association veterinarian shall be present in the paddock for saddling, shall accompany each field to the starting post, and observe all horses after the finish of each race. If, in the opinion of the association veterinarian, a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which injury shall render such horse unfit to race, he shall recommend to the

stewards that the horse be excused and placed on the veterinary list. All horses requested to be scratched for physical reasons after scratch time shall be inspected by the association veterinarian who shall report the condition of such horse to the stewards.

(5) No association veterinarian during his employment by an association shall be permitted to engage in private veterinary practice involving quarter horses or appaloosa; nor be employed by or receive any compensation directly or indirectly from any licensed owner or trainer; nor sell or buy, for himself or another, any quarter horse or appaloosa; nor place any wager in any manner on any race run at the association; nor sell any drug supplies; nor sell horse insurance; nor be licensed to participate in racing in any other capacity.

Section 32. Horse Identifier. Each association shall employ one (1) or more persons to be charged with the responsibility of proper identification of all horses entered to be raced. A horse identifier may accompany the association veterinarian on the pre-race examination of all starters. Every starter shall be examined in the paddock by a horse identifier for sex, age, color, markings, and lip tatoo, for comparison with its registration certificate; photographs may be used as an aid in identification. If a horse identifier has any doubt as to the identity of a horse entered to be raced, the horse identifier shall so notify the paddock judge and the stewards.

Section 33. Valets. Each association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. Such valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section 34. Minimum Purse and Stakes Values. No association shall program or run any race the purse for which is less than $500 in cash without special permission of the commission. No association shall program or run any stakes race the added value of which is less than $1,000 in cash added by the association to stakes fees paid by owners. Such minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section 35. Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen
(1) Type and number of entities affected: The Horsemen's bookkeepers and all horsemen.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Additional regulation required to clarify Horsemen's bookkeeper's bond and to clarify Horsemen's bookkeeper's duties.
(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: Existing regulation did not clarify the amount of bond required for the Horsemen's bookkeeper nor do they require that stakes nominations and subscriptions be deposited in an escrow account on a daily basis when received by the racing associations.

Tiering:
Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:050. Jockeys.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and

Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a rider and who never previously has ridden in a race may be permitted to ride in two (2) races before applying for a license as a jockey; provided, however:

(1) Such person is a licensee with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(3) The starter has schooled such person breaking from the starting gate with other horses and approves such person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards in their sole discretion are satisfied such person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without prior approval of the stewards.

Section 2. Qualifications for License. In addition to rules applicable to licensees under 812 KAR 1:020, a holder of a license as a jockey or apprentice jockey:

(1) Must be an individual person sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Must have served at least one (1) year with a racing stable;

(3) Must have ridden in at least two (2) races;

(4) Must, when required by the stewards, provide a medical affidavit certifying such person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, must be approved by the stewards as to competency of horsemanship, must be granted a jockey's license, and such amateur status must be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Rider Contracts. All contracts between an employer owner or trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than thirty (30) days, as well as any amendments thereto, or cancellation, or transfer thereof, must be in writing with signature of parties thereto notarized, must be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties thereto to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of such contract;

(2) The contract employer possesses such character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) Such contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel such contract after two (2) years from date of execution.

Section 5. Restrictions as to Contract Riders. No rider may:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 6. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. Such agreements, if for terms of more than thirty (30) days, must be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 7. Jockey Fee.

(1) The fee to a jockey in all races shall be, in the absence of special agreement, as follows:

(a) Purse, $500 to $800: Winning mount $40 [ten (10) percent of purse]; Second mount $30 [23]; Third mount $27 [22]; Losing mount $25 [20];

(b) Purse, $900 to $1,400: Winning mount, ten (10) percent of purse; Second mount $35 [30]; Third mount $30 [25]; Losing mount $25 [20];

(c) Purse, $1,500 to $1,900; Winning mount, 10 percent of purse; Second mount $35; Third mount $30; Losing mount $25;

(d) Purse $2,000 to $3,400: Winning mount, 10 percent of purse; Second mount $45; Third mount $35; Losing mount $30;

(e) Purse, $3,500 to $4,900: Winning mount, 10 percent of purse; Second mount $50; Third mount $40; Losing mount $30;

(f) Purse, $5,000 and up: Winning mount, 10 percent of purse; Second mount $55; Third mount $45; Losing mount $35;

(g) In all finals of stakes, futurities, etc., the jockey fee shall be ten (10) percent of the jockey's mount's earnings.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; in such case, the owner or trainer shall pay an appropriate fee to each rider engaged for such race.

(b) When such rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause therefor.

(c) When such rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

Section 8. Duty to Fulfill Engagements. Every ride shall fulfill his duly schedule riding engagements, unless excused by the stewards. No rider shall be forced to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

Section 9. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. In the event a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who thereupon may name a substitute rider and shall cause announcement to be made of any such rider substitution prior to opening of wagering on such race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. Such rider shall have no contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, or a racing official, or a representative fo the regular news media, until such rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for such security of jockey room as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards after fulfilling his final riding engagement of the day he intends to depart.

Section 10. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, and rider's safety helmet shall not be included in a rider's weight.

Section 11. Wagering. No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. Such owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and such record shall be available for examination by the stewards at all times.

Section 12. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily race program. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 13. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing such films, or with the stewards' permission, be represented at such viewing by his designated representative.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary

APPROVED BY AGENCY: March 14, 1985

FILED WITH LRC: March 14, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen

(1) Type and number of entities affected: Owners of horses and jockeys.

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

1. First year: Cannot be determined because it would be necessary to know amount of each purse due to fact some jockey fees are determined by percentages.

2. Continuing costs or savings: Would fluctuate according to purse.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(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: Several scales considered including other quarterhorse tracks in other states. Scale adopted is more in line with jockeys' fees at comparable tracks.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This regulation is an effort to increase jockey's fees to make them comparable with jockeys' fees at comparable quarterhorse race tracks throughout the United States. This regulation does not cover special agreements between jockeys and owners.

Tiering:
Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:060. Pari-mutuel wagering.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for the operation of pari-mutuel wagering.

Section 1. Pari-mutuel System of Wagering Required. Each association licensed to conduct racing in this state may permit wagering only on races conducted by such association on the grounds of such association; no association may accept wagers on races conducted elsewhere by another association. All such permitted wagering shall be under the pari-mutuel system, employing an electric totalizator approved by the commission. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be ejected or excluded from association grounds.

Section 2. Totalizator Required. Each association shall install and operate during its race meeting an electric totalizator approved by the commission. Such totalizator shall be tested daily under the supervision of the commission to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel manager shall maintain complete records of all wagering so the commission may upon review ascertain for any race: the opening line and subsequent odds fluctuations, the amount, and at which window, wagers were placed on any betting interest, and such other information as the commission may from time to time require. A copy of such wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and may not be destroyed without permission of the commission.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta and quinella, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 138.515, with the remainder being the net pool for distribution as payoffs to ticket holders as follows:
(1) Win pool. The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.
(a) In the event of a dead heat for first involving horses of two (2) different betting interests, the win pool is distributed as if a place pool; if involving horses of three (3) different betting interests, the win pool is distributed as if a show pool.
(b) In the event no win ticket is sold on the horse which finishes first, the net in pool is distributed to holders of win tickets on the horse finishing second.
(2) Place pool. The amounts wagered to place on the first two (2) horses to finish are deducted from the net pool to determine the profit; the profit is divided into two (2) equal amounts; one-half (1/2) of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half (1/2) of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place of such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two (2) finishers.
(a) In the event of a dead heat for first: between horses representing the same betting interest, the place pool is distributed as if a win pool; if between horses representing two (2) different betting interests, the place pool is distributed as if one (1) betting interest finished first and the other finished second; if between horses representing three (3) different betting interests, the place pool is distributed as if a show pool.
(b) In the event of a dead heat for second: between horses representing the same betting interest, the place pool is distributed as if no

dead heat occurred; if between horses representing two (2) or more different betting interests, the profit is divided in half, with one-half (1/2) allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth (1/4) of the profit on the net place pool for wagers to place on each of two (2) horses finishing in a dead heat for second, or one-sixth (1/6) of the profit for wagers to place on each of three (3) horses finishing in a dead heat for second.

(c) In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.

(d) In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the place pool.

(3) Show pool. The amounts wagered to show on the first three (3) horses to finish are deducted from the net pool to determine the profit; the profit is divided into three (3) equal amounts; one-third (1/3) of the profit is divided by the amount wagered to show on the first finisher, such quotient being the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third (1/3) of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher; payoffs include return of amount wagered and profit thereon as to each of the first three (3) finishers.

(a) In the event of a dead heat for first: between two (2) horses involving different betting interests, or three (3) horses involving three (3) different betting interests, the show pool is distributed as if no dead heat occurred; if between two (2) horses involving the same betting interest two-thirds (2/3) of the profit is allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the other horse among the first three (3) finishers; if between three (3) horses involving one (1) betting interest, the show pool is distributed as if a win pool.

(b) In the event of a dead heat for second: between two (2) horses involving two (2) different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds (2/3) of the profit shall be allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the horse finishing first; if between three (3) horses involving two (2) or three (3) betting interests, one-third (1/3) of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds (2/3) of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.

(c) In the event of a dead heat for third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two (2) or more betting interests, two-thirds (2/3) of the profit shall be allocated to wagers to show on the first two (2) finishers, and the remaining one-third (1/3) is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

(d) In the event the first three (3) horses to finish comprise one (1) betting interest, the show pool shall be distributed as a win pool. In the event two (2) horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds (2/3) of the profit shall be allocated to wagers to show on the other horse among the first three (3) finishers.

(e) In the event one (1) horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second, and another horse included in the same betting interest finishes in a dead heat for third; one-half (1/2) of the profit in the show pool shall be allocated to wagers on such field or entry, one-third (1/3) of the profit in the show pool shall be allocated to wagers on the horse finishing first or second, and the remaining one-sixth (1/6) of such profit shall be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.

(f) In the event only two (2) horses finish, the show pool, if any, shall be distributed as if a place pool; if only one (1) horse finishes, the place and show pools, if any, shall be distributed as if a win pool; if no horse finishes, all money wagered on such race shall be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool.

(4) Daily double pool. The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first involving two (2) different betting interests, in one (1) of the two (2) daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one (1) daily double race and one (1) of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one (1) daily double race and the other betting interest involved in the dead heat in the other daily double race.

(b) In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four (4), or six (6), or nine (9), winning combinations for proportionate allocation for each such winning daily double wager.

(c) In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one (1) of the daily

double races, the daily double pool is distributed as if win pool with the profit allocated to wagering combinations which include the horse or betting interest which finished first in one (1) of the daily double races.

(d) In the event no daily double ticket is sold combining the horses or betting interests which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit shall be that combining the horses or betting interests which finished second in each of the daily double races.

(e) If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(f) If, prior to closing of the daily double wagering, a scheduled starter in the second half of the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(g) If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting-gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race shall be allocated consolation payoffs:

1. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with such horse prevented from racing in the second daily double race;

2. Such consolation payoffs shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

(h) If for any reason the first daily double race is cancelled or declared "no race" by the stewards, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is cancelled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(i) If no daily double ticket is sold requiring distribution, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon.

(5) Quinella pool. The amount wagered on the winning combination, such being the first two (2) finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first: between horses involving two (2) different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three (3) horses finishing in a dead heat for first.

(b) In the event of a dead heat for second: between horses involving two (2) different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three (3) horses finishing in a dead heat for second.

(c) In the event horses representing a single betting interest finish first and second, the net quinella pool shall be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.

(d) In the event no quinella ticket is sold combining:

1. The first finisher with one (1) of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second;

2. The first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two (2) horses which finished in the dead heat for second;

3. The first finisher with either of the horses finishing in a dead heat for second, or combining the two (2) horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three (3) finishers with any other horses;

4. The first two (2) finishers, then the net quinella pool shall be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.

5. Horses or betting interest as would require distribution, then the entire quinella pool shall be refunded upon presentation and surrender of quinella tickets thereon;

(6) Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(a) The exacta is not a "parlay" and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(b) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and/or holders of tickets selecting the second place horse to finish second.

(c) If no ticket is sold that would require distribution of an exacta pool to winner as above defined, the association shall make a complete and full refund of exacta pool.

(d) In case of a dead heat between two (2) horses for first place, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two (2) horses for second place, the exacta pool shall be figured as a place pool, the holders of tickets combining the winning horse and the two (2) horses finishing second participating in the payoff.

(e) In the event of a dead heat for second place, if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(f) In the event of an entry finishing first and second, the net exacta pool shall be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.

(7) Trifecta pool. The trifecta is a contract by the purchaser of a ticket combining three (3) horses in a single race, selecting the three (3) horses that will subsequently finish first, second and third in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(a) The trifecta is not a parlay and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(b) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner.

(c) If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.

(d) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool.

(e) No entries or field horses shall be allowed in any race that the trifecta is being sold.

(f) For the purpose of trifecta wagering the trifecta race shall be drawn to consist of eight (8) starters and four (4) also eligibles.

(8) [(7)] Refunds.

(a) If after win, place, or show wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate door to open properly, the wagers on such horse shall be deducted from the win, place, and show pools, as the case may be, and refunded upon presentation and surrender thereof. If more than one (1) horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination in a daily double, exacta or quinella or trifecta wager, then there shall be no refund unless all of the horses representing such single betting interest are excused by the stewards and/or are prevented from racing because of failure of the starting-gate doors to open properly.

(b) If after exacta and, quinella and trifecta wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then exacta and, quinella and trifecta wagers combining such horse with any other horse or betting interest shall be deducted from the exacta and, quinella and trifecta pool and refunded upon presentation and surrender of exacta and, quinella and trifecta quinella tickets thereon.

(9) [(8)] Race cancelled. If for any reason a race is cancelled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon shall be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which shall be distributed as provided under subsection (4)(h) of this section.

(10) [(9)] Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be two (2) dollars. The minimum payoff on a two (2) dollar wager shall be two (2) dollars and twenty (20) cents.

Section 6. Minors Prohibited from Wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be

mandatory, but the association shall make every effort to compute such daily double prices and advise the public of same by posting or public-address announcement as soon as possible and prior to the running of the second daily double race.

Section 8. Betting Explanation. Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; such explanation also shall be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation shall be submitted to the state steward prior to publication so as to insure an absence of conflict with these rules.

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer daily double, exacta or quinella wagering, shall first apply therefor in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent Upon Entries. (1) Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six (6) or more betting interests.

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses representing four (4) or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.

(3) If, by reason of a horse being excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting-gate door to open properly, the number of actual starters representing different betting interests is:

(a) Reduced to five (5), then the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets thereon;

(b) Reduced to four (4) or fewer, then the association may cancel both place and show wagering on that race and the entire place pool and show pool shall be refunded upon presentation and surrender of such place and show tickets thereon.

Section 11. Pari-mutuel Ticket Sales. (1) No pari-mutuel tickets shall be sold except by the association conducting the races on which such wagers are made, and the same shall be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows. No pari-mutuel ticket may be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, must be made before such person leaves the seller window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender thereof to the association where such wager was made within two (2) years following the running of the race on which such wager was made. Failure to present any such ticket within two (2) years shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission, shall in no way affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets (calculating sheets) of such race to be proven by the computer (calculator) and the winners verified. Such proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets (calculating sheets) as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet (calculator) before released to the public.

(8) Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool or pools, is less than the amount used in calculating the payoff, such deficiency shall be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the payoff due to a mechanical error of the totalizator such error resulting in underpayment to the public, then the aggregate of such underpayments shall be paid into the corresponding pool of the next race or races, in such amounts as may be determined by the state steward and the pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment shall be paid to the Department of Revenue.

Section 12. Betting Interests Involving More Than One (1) Horse. When two (2) or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry," such mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 13. Emergency Situations. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, then the pari-mutuel manager shall make an immediate decision and render a full report to the commission.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen
(1) Type and number of entities affected: Racing associations and public.
(a) Direct and indirect costs or savings to those affected:
1. First year: Cannot be determined. Depends on number of trifecta races which Racing Association runs during a meet.
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: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Will increase the handle and therefore the state pari-mutuel take. Amount is unknown.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Paducah Downs Racing Association requested trifecta wagering to increase its daily handle, which is desirable to make quarterhorse tracks profitable and increase state revenue.
(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 intended to increase the handle at quarterhorse tracks in the Commonwealth, which will improve quarterhorse racing associations' profitability.

Tiering:
Was tiering applied? No. Not applicable. The amendment does no more than set up a trifecta betting system.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse, Appaloosa, and Arabian Commission
(Proposed Amendment)

812 KAR 1:070. Entries, subscriptions and declarations.

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to outline requirements for entry, subscription and declaration of horses in order to race.

Section 1. Entering Required. No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given therefor.

Section 2. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be lodged with the racing secretary and shall not be considered as having been made until received by the racing secretary who shall maintain a record of time of receipt of same.
(2) Every entry must be in the name of such horse's licensed owner, as completely disclosed and registered with the racing secretary under these rules, and made by the owner, or trainer, or a person deputized by such owner or trainer.
(3) Every entry must be in writing, or by telegraph promptly confirmed in writing; except that an entry may be made by telephone to the racing secretary, but must be confirmed promptly in writing should the stewards, the racing secretary, or an assistant to the racing secretary so request.
(4) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, dam, and broodmare sire, as reflected by such horse's registration certification.
(a) No horse may race unless correctly identified to the satisfaction of the stewards as being a horse duly entered.
(b) In establishing identity of a horse,

responsibility shall be borne by any person attempting to identify such horse as well as the owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

(5) No alteration may be made in any entry after the closing of entries, but an error may be corrected.

(6) No horse may be entered in two (2) races to be run on the same day.

(7) First time starters and horses without a past performance record at a pari-mutuel race track must complete two (2) schooling races and be approved by the stewards before entering any race.

Section 3. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where such race is to be run, unless its stabling elsewhere has been approved by the racing secretary as provided by 812 KAR 1:035.

Section 4. Limitation as to Spouses. No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that if the license of a jockey has been suspended for a routine riding offense, then the stewards may waive this rule as to the duly licensed husband or wife of such suspended jockey.

Section 5. Mutuel Entries. (1) All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest except that in order to make up to eight (8) separate betting interests, the horses may be allowed to run as separate betting interests where a trainer enters more than one (1) horse, each having bona fide separate owners, at the discretion of the stewards. All horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(2) No more than two (2) horses having common ties through ownership or training as to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one (1) of the horses must be made.

(3) In no case may two (2) horses having common ties through ownership start in a race to the exclusion of a single interest. In races in which the number of starters if limited to ten (10) or less, no two (2) horses having common ties through training may start to the exclusion of a single entry.

Section 6. Subscriptions. (1) Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due thereon.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded, "except as otherwise stated in the conditions of a stake race."

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subcription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) When a horse is sold privately, or sold at public auction, or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new owner; except that, if such horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter such horse, then such subscriptions shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

Section 7. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for such races. If a race is not split, no entry, subscription, or declaration shall be accepted after such closing time; except that in event of an emergency, or if a purse race fails to fill them the racing secretary may, with the approval of the steward, extend such closing time.

(2) If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing; provided, they are received in time for compliance with every other condition of such race.

(3) Entries which have closed shall be compiled without delay by the racing secretary along with declarations, be posted.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate approved by the commission as can be positioned across the width of the track at the starting point for such race; and such maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, can be afforded a fair and equal start.

(2) Any claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered must be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered must be run.

(3) If any purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section to be run, then the association may cancel or declare off such race. The names of all horses entered therein shall be publicly posted in the office of the racing secretary not later than 1:00 p.m. the same day.

Section 9. Split or Divided Races. (1) In the event a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice thereof not less than fifteen (15) minutes before such races are closed so as to grant time for the making of additional entries to such split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made, and in the absence of specific prohibition by such conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making such multiple entry, at the time of such entry, indicates such coupling of horses is not to be uncoupled when such race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided above by this rule, shall be divided by lot so as to provide a number of betting interests as near equal as possible for each division of such split race.

Section 10. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also Eligible List. (1) If the number of entries for a purse race exceed the number of horses permitted to start in such race as provided by Section 8 of this regulation, then the names of as many as eight (8) horses entered but not drawn into such race as starters shall be posted on the entry sheet as "also eligible" to start.

(2) After any horses have been excused from a purse race at scratch time, a new drawing shall be taken as to horses on the also-eligible list, and the starting and post position of such horses drawn from the also-eligible list shall be determined by the sequence drawn.

(3) Any owner or trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the racing secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

(4) Where entries are closed two (2) racing days prior to the running of a race, any horse on an also-eligible list, and which also has been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination, and as to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

(2) No preference shall be given a horse otherwise entitled thereto for a race if such horse also is entered for a race on the succeeding day.

(3) No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred."

Section 13. Arrears. No horse may be entered or raced if the owner thereof is in arrears as to any stakes fees due by such owner; except with the approval of the racing secretary.

Section 14. Declaration. Withdrawal of a horse from a race before closing thereof by the owner or trainer or person deputized by either, such being known as a "declaration," shall be made in the same manner as to form, time, and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any licensed association.

Section 15. Scratches. Withdrawal of a horse from a race after closing thereof by the owner or trainer or person deputized by either, such being known as a "scratch," shall be permitted only under the following conditions:

(1) A horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the racing preceding such stakes race by the filing in writing of such intention with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(2) No horse may be scratched from a purse race without approval of the stewards and unless such intention to scratch has been filed in writing with the racing secretary or his assistant at or before the time conspicuously posted as "scratch time." Scratch of one (1) horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than ten (10) betting interests in either of the two (2) daily double races, or horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective

minimum number for such races, this privilege to be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after such horse was scratched or excused.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen

(1) Type and number of entities affected: Owners, trainers and racing associations.

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

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: No change

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

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: Should increase mutuel handle and therefore state revenue. Amount cannot be determined.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Existing regulation required all horses entered by a trainer be joined as single betting entity, which created difficulties for Paducah Downs Racing Association in their efforts to fill certain races.

(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: Paducah Downs Racing Association was having difficulty filling some of its races and there were many instances where more than one trainer entered two horses owned by separate owners in a race, which reduced the number of betting interests to as few as six, which in turn decreased the mutuel handle on said races, which also created a situation which made minus pools possible. Comparable race tracks around the country have enacted similar regulations to allow separate betting interests for separate owners to alleviate the above problems.

Tiering:
Was tiering applied? No. Not applicable. This amendment does no more than set up a regulation that will allow racing associations to fill their races and increase the pari-mutuel handle.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Quarter Horse Appaloosa and Arabian Commission
(Proposed Amendment)

812 KAR 1:080. Claiming races [of horses].

RELATES TO: KRS 230.410 to 230.447
PURSUANT TO: KRS 13A.010 et seq. [13.082]
NECESSITY AND FUNCTION: To regulate conditions under which quarter horse, [and] appaloosa and Arabian racing shall be conducted in Kentucky. The function of this regulation is to establish the requirements for claiming horses [relates to the claiming of horses].

Section 1. Claiming Races. (1) In claiming races any horse is subject to claim for its entered price by any licensed owner, in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows: [In claiming races any horse is subject to claim for its entered price by any owner, in good standing, who has starter a horse at the meeting in which the claim is made. An owner may claim out of his initial race.]

(a) Applicant shall, fifteen (15) days prior to entering a claim, submit an application for owners original license, to be accompanied by a financial statement; the name of a licensed trainer or person eligible to be licensed as a trainer, who will assume care and responsibility for the horses claimed; and requisite fee for owners license.

(b) This certificate will be valid for the remainder of the calendar year.

(2) A claim may be made by an authorized agent, but an agent may may claim only for the account of those for whom he is licensed as agent, and the name of the authorized agent, as well as the name of the owner for whom the claim is being made, shall appear on the claim slip.

(3) No person shall claim his own horse, or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the owner or trainer from whom claimed.

(4) No person shall claim more than one (1) horse from any one (1) race. No authorized agent, although representing several owners, shall submit more than one (1) claim for any race. When a stable consists of horses owned by more than one (1) person, trained by the same trainer, not more than one (1) claim may be entered on behalf of such stable in any one (1) race. An owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest.

(5) A claimed horse shall not run for thirty (30) days after being claimed in a race in which

the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the thirty-first (31st) calendar day following the claim. This provision shall not apply to starter handicaps, in which the weight to be carried is assigned by the handicapper.

(6) No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No horse shall race elsewhere until after the close of the meeting at which it was claimed.

(7) Each claim shall be made in writing on a form and in an envelope supplied by the association. Both form and envelope must be filled out completely, and must be accurate in every detail.

(8) Claims must be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid the claimant must have at the time of filing the claim a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association, and whether the claimant has established claiming privileges by starting a horse at the meeting.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11) Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the racing secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race, and furthermore the horse in question shall be disqualified from further racing until delivery is made.

(12) Claims are irrevocable. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter, and said claimant shall then become the owner of the horse whether it be alive or dead, sound or unsound, or injured during the race, or after it. A claimed horse shall run in the interest of and for the account of the owner from whom claimed.

(13) No person shall offer, or enter into, an agreement to claim or not to claim, or attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt by intimidation to prevent anyone from running a horse in any claiming race. No owner or trainer shall make an agreement with another owner or trainer for the protection of each other's horses in a claiming race.

(14) Claims which are not made in keeping with the rules shall be void. The stewards may at any time in their discretion require any person filing a claim to make affidavit in writing that he is claiming in accordance with the rules. The stewards shall be the judges of the validity of the claim, and if they feel that a "starter" was nominated for the purpose of making its owner eligible to claim, they made invalidate the claim.

(15) Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the racing secretary and/or horseman's bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be assumed that none exists.

(16) Should a stable at a meeting be eliminated by sale or removable from the grounds, save to other stabling approved by the stewards, the right to claim in void. An owner whose stable has been completely eliminated by claiming shall have the right to claim during the remainder of the meeting at which his stable was eliminated, or for thirty (30) Kentucky racing days, whichever period is longer. If the thirty (30) day period should extend into the next succeeding meeting, the owner must obtain a certificate from the stewards of the meeting at which he lost his last horse, and must present this certificate when filing a claim at the next meeting. After claiming a horse under the conditions of this rule the owner shall be required to reinstate his eligibility to claim by starting a horse, before being eligible to make another claim.

(17) The engagements of a claimed horse pass automatically with the horse to the claimant.

(18) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

CARL B. LARSEN, Executive Director
MELVIN WILSON, Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 14, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 23, 1985, at 10 a.m. at the Kentucky Harness Racing Commission Office, 1051-H Newtown Road, Lexington, Kentucky 40511. Those interested in attending this hearing shall contact: Carl B. Larsen, c/o Kentucky Harness Racing Commission, 1051-H Newtown Pike, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen
(1) Type and number of entities affected: Owners and potential owners of horses.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
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: Intention is to encourage horse racing and to make it possible for non-owners to claim horses.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: The existing regulation prohibits anyone from claiming a horse unless he is an owner in good standing who has started a horse at the meeting in which the claim is made. That regulation prohibits anyone else from claiming a horse in a race regardless of qualifications. There is no logic or reason to support the existing regulation and the new regulation will tend to increase ownership of horses and interest in racing and will be in the best interests of racing in Kentucky. Other racing commissions have adopted the open claiming provisions such as the proposed amendment.

Tiering:
Was tiering applied? No. This regulation enables those persons interested in racing, the opportunity to own and race a horse immediately. Provided that those persons meet the regulations and are financially capable to race.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:020. Reportable diseases.

RELATES TO: KRS 211.180, 214.010, 333.130
PURSUANT TO: KRS 194.050, [13.082, 195.040,] 211.090
NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet [Department] for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other such diseases and health hazards as may be controlled. This regulation is being promulgated in order to achieve uniform reporting of selected diseases [effectuate uniform reporting of cases of communicable diseases in accordance with the provisions of KRS 214.010].

Section 1. Reportable Diseases: Time of Reporting. Because of their public health significance, the following diseases and occurrences are hereby declared to be reportable [diseases] within the time period specified below. All cases shall be reported.
(1) Diseases to be reported within twenty-four (24) hours. The following diseases and occurrences shall be reported individually within twenty-four (24) hours of suspicion of diagnosis:
[(a) Diseases for which routine immunization is recommended: diphtheria, whooping cough (pertussis), poliomyelitis (paralytic or non-paralytic), measles (rubeola), tetanus, rubella, mumps.]
[(b) Others:] animal bites, anthrax, botulism (food-borne and infant), campylobacteriosis, cholera, diphtheria, encephalitis, gonococcal infections (all suspected or confirmed antibiotic-resistant strains); [infectious] hepatitis (viral), legionnaire's disease, malaria, measles (rubeola, meningitis (caused by N. meningitidis or H. influenzae), meningococcemia, pertussis (whooping cough), [ophthalmia neonatorum, gonococcal; meningococcal infections,] plague, poliomyelitis, [relapsing fever,] rabies [in] (human), Reye's syndrome, rubella (including congenital rubella syndrome), salmonellosis, shigellosis, [smallpox,] syphilis (primary, secondary, early latent suspected to be under one (1) year's duration and congenital, trichinosis, [infectious;] tuberculosis, typhoid fever, [typhus,] yellow fever, yersiniosis, [any suspected food-borne illness] and a suspected epidemic of any disease.
(2) Diseases to be reported within seven (7) days. The following diseases shall be reported individually within seven (7) days of suspicion of [the] diagnosis: AIDS (acquired immune deficiency syndrome), amebiasis, asbestosis, ascariasis, brucellosis, chancroid, Chlamydia infections, coal worker's pneumoconiosis, giardiasis, gonococcal infections (other than antibiotic-resistant strains), granuloma inguinale, herpes simplex infections (genital), histoplasmosis, hookworm, Kawasaki's disease, lead poisoning, leprosy, leptospirosis, Lyme disease, lymphogranuloma venereum, meningitis (caused by any organism other than N. meningitidis or H. influenzae), mesothelioma, mumps, psittacosis, Q fever, Rocky Mountain spotted fever, silicosis, syphilis (all stages other than those in subsection (1) of this section, tetanus, toxic shock syndrome, tularemia, typhus.
[(a) All communicable diseases listed in the 1975 edition of the American Public Health Association publication, "Control of Communicable Diseases in Man," except as otherwise provided in this regulation.]
[(b) Other selected non-communicable diseases: animal bites (by species), rheumatic fever, encephalitis, post-infectious; rubella, congenital; syphilis, non-infectious; complications of any immunization.]
(3) Diseases to be reported collectively, on a weekly basis. The following diseases shall be reported collectively on a weekly basis: chickenpox, influenza[, conjunctivitis, scarlet fever, streptoccocal pharyngitis; gastroenteritis, non-food-borne, non-epidemic].

Section 2. Reporting of Diseases. (1) Physicians. All physicians [Each and every physician] in active practice within the State of Kentucky shall report to the local health department of the county in which they practice, [the physician practices the identifying and pertinent epidemiological, clinical and laboratory information of any confirmed or suspected case under his care of] any disease listed as reportable in Section 1 of this

regulation as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health. [Cases of venereal disease shall be reported in a confidential manner according to the provisions of the regulation of the Department for Human Resources relating to venereal diseases.]

(2) Hospitals. The person in charge of any licensed hospital in Kentucky shall ensure that any hospitalized patient with any of the diseases listed in Section 1 of this regulation, as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health, shall be reported to the local health department of the county in which the hospital is located or to the Department for Health Services. [Reporting of diseases by others. The head of a family, midwife, nurse, superintendent, or person in charge of a hospital, laboratory, other institution or dispensary, superintendent, principal, teacher or other person in charge of any public, private, or parochial school, or any person in charge of any group of persons, shall report immediately any of the diseases listed as reportable to the local health department in whose jurisdiction the disease occurs.]

(3) Laboratories. The person in charge of any laboratory licensed in the state of Kentucky shall report to the local health department of the county in which the laboratory is located or to the Department for Health Services, any positive microbiologic or serologic test which indicates the presence of infection with an organism associated with any of the reportable diseases in Section 1 of this regulation, as well as any other disease which may be designated as reportable by the Commissioner of the Department for Health Services, upon his determination that such reporting is important for the public health. These reports shall be made within the timeframe for the corresponding disease as in Section 1 of this regulation.

(4) Information required in report. Except for diseases listed in Section 1(3) of this regulation and any sexually transmitted disease, all reports shall contain the name and address of the patient as well as pertinent clinical, laboratory and epidemiological information. Cases of sexually transmitted disease may be reported with a reidentifiable code number assigned to the patient by the reporter and substituted in lieu of the patient's name and address.

(5) [(3)] Reporting of communicable diseases in animals. It shall be the duty of every person having knowledge of the existence of an animal of any species apparently afflicted with rabies, anthrax, eastern or western equine encephalitis, [erysipelas,] leptospirosis, brucellosis, tuberculosis, psittacosis, or other disease known to be communicable to man to report the pertinent information within twenty-four (24) hours [immediately] to the local health department in the county in which the animal is located.

Section 3. Transmission of Reports to the Department for Health Services [Human Resources]. Case reports described in Sections 1 and 2 of [The reports of cases of reportable disease required by] this regulation shall be transmitted from local health departments to the Department for Health Services [Human Resources] within three (3) days of receipt, or sooner if an epidemic is suspected or assistance is needed [the time intervals stated in this regulation]. Where there is no local health department or when for any reason the local health department is unable to receive or forward [transmit] any report of a [any] reportable disease, the report shall be submitted directly to the Department for Health Services [Human Resources].

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 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 April 17, 1985, 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: M. Ward Hinds, M.D.
(1) Type and number of entities affected: Physicians (5,000), hospitals (122), medical laboratories (250) and county health departments (120).
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs or savings.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Continuation of submission of reports on certain diseases of public health importance in Kentucky.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No additional costs or savings
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Continuation of tabulation and analysis of reported diseases.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no practical alternative methods for determining the incidence and distribution of these diseases in Kentucky.
(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:

Tiering:
Was tiering applied? No. N/A.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 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 <u>February 11,</u> [January 25,] 1985. This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting benefit rights interviews; for processing payorder cards for payment; for correcting and changing benefit data; for registering claimants for work; for conducting the eligibility review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-service-members, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.

(2) Unemployment Insurance Benefit Branch Procedures Manual issued May, 1982 and last revised December 12, 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 January 15, 1985. 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 November 9, 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 January 11, 1985. 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, and last revised December 12, 1984. 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. Chapter 6000, Claims Investigation, Section 6207, strike pages 90 and 91, dated 12-11-84 and substitute in lieu thereof pages 90 and 91, dated 2-11-85 which update procedures for sending repayments of benefit overpayments from local offices to the Benefit Payment Control Section.

[(a) Chapter 1000, Introduction, Sections 1000-1040, strike entire chapter dated 4-1-83 and substitute in lieu thereof entire chapter dated 1-14-85 which updates procedures for making tax-related forms available to area employers.]

[(b) Chapter 2000, Initial Claims, Section 2260, strike pages 33 and 34, dated 11-3-84 and substitute in lieu thereof pages 33 and 34, dated 1-25-85 which update procedures for processing additional claims.]

[(c) Chapter 5000, Interstate and Combined Wage Claims, Section 5670, strike page 90, dated 11-21-84 and substitute in lieu thereof page 90, dated 1-25-85 which updates procedures for data entry and processing of combined wage claims when there are insufficient wages to establish a valid Kentucky claim.]

[(d) Chapter 6000, Claims Investigation, Sections 6021, 6022, 6031, 6033 and 6130 through 6134, strike pages 1 and 4, 20, 21, 24, 25, 30, 31, 74 and 75, all dated 10-17-84; pages 28 and 29, dated 10-30-84; and pages 5 and 6, dated 11-30-84 and substitute in lieu thereof pages 1 through 6 and 74 through 75C, dated 1-15-85; and pages 20, 21, 24 through 24B, 25 and 28 through 31A, all dated 1-11-85 which include policy and procedures formerly contained in U.I. Bulletins 3, 6 and 12 relating to suitable work applications, pension deductions and training programs.]

[(e) Chapter 12000, Personnel Time Distribution System, Section 12180, strike pages 33 through 36, dated 10-5-82 and substitute in lieu thereof pages 33 through 36, dated 1-25-85 which update time distribution codes for Random Audit/Quality Control activities.]

[(2) Unemployment Insurance Tax Collections and Accounting Branch Manual. Chapter 500, Delinquent Account Unit, Sections 515 and 566, strike page 10, dated 5-1-84 and substitute in lieu thereof pages 10, 1 and 2, respectively, all dated 1-15-85 which update procedures for writing off uncollectible employer debts.]

[(3) Unemployment Insurance Field Audit Manual, Chapter 500, Reports, Section 522, strike page 23, dated 3-1-84 and substitute in lieu thereof page 23, dated 1-11-85 which updates procedures for assessing a ten (10) dollar penalty for late filing of employer reports.]

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: March 14, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985, at 9 a.m. in the 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 April 17, 1985, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 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: Minimal
(a) Direct and indirect costs or savings: Minimal
1. First year: Minimal
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Minimal increase
(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 merely incorporates operational procedures by reference as required by KRS Chapter 13A.

Tiering:
Was tiering applied? No. 1) Procedures already in effect; and 2) All claimants are treated equally under the law.

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

904 KAR 1:009. Physicians' 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 provisions relating to physicians' services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere.

Section 2. Limitations. (1) Coverage for initial and extensive visits shall be limited to one (1) visit per patient per physician per calendar year.
(2) Payment for outpatient psychiatric services rendered by other than board-eligible and board-certified psychiatrists shall be limited to four (4) such services per patient per physician per twelve (12) month period [calendar year].
(3) A patient placed in "lock-in" status due to over-utilization is to receive services only from his/her lock-in provider except in the case of emergency or referral.
(4) Coverage for laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule. Physician laboratory procedures are limited to those specified as payable, except that the professional component of laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic are covered so long as the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.
(5) The cost of preparations used in injections shall not be considered a covered benefit.
(6) Telephone contacts with patients shall not be considered a covered benefit.

[Section 3. The provisions of Sections 1 and 2 of this regulation shall be effective January 1, 1985.]

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 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 April 17, 1985 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; all participating physicians who are not board-eligible or board-certified psychiatrists.
(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 is considered to be a procedural change with no measurable cost impact.

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 1:013. Payments for hospital inpatient 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 hospital inpatient services.

Section 1. Hospital Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised January 1, 1985 [July 1, 1983], which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 [42] CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc.

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up. No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of upper limits. An upper limit will be established on all costs (except Medicaid capital cost) at 105 percent of the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year [latest available cost data]; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

(8) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended and indexed separately.

(9) Hospitals whose general characteristics are not those of an acute care hospital (i.e., because they are primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(10) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-State Hospitals. Participating out-of-state hospitals, except those where the other state's Medicaid Program pays on the basis of diagnosis related groupings, shall be reimbursed for covered services rendered eligible Kentucky Medicaid recipients at the lower of the rate paid by the other state's Medicaid Program or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size, except that payments shall not exceed charges. For those participating out-of-state hospitals where the other state's Medicaid Program pays on the basis of diagnosis related groupings, reimbursement for covered services rendered eligible Kentucky Medicaid recipients shall be at the lower of eight (80)

percent of the hospital's covered charges or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size. The operating cost upper limits shall be appropriately adjusted to include capital costs. The appropriate amount to include for capital costs shall be the average allowable per diem capital cost for the peer group (not adjusted for occupancy). Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.

[Section 6. Date of Implementation. The provisions of this regulation as amended shall be effective on January 1, 1985.]

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: February 18, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 at 9 a.m. in the Department for Health Service Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 17, 1985 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: 108 participating hospitals
(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: *The hospitals may be either positively or negatively affected by this change, since the actual effect will be dependent on whether inflation is lesser or greater than anticipated when the projection is made. The change is being made as a further enhancement of the prospective rate setting concept since hospitals will be further assured of their actual revenues for the particular period of time.

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

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

904 KAR 1:022. Skilled nursing facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS [13.082,] 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to skilled nursing facility services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Participation Requirements. Each facility desiring to participate as a skilled nursing facility must meet the following requirements:
(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Social Insurance, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.
(2) Each skilled nursing facility shall be required to have participatory status in the program of health care known as Title XVIII, Medicare, before the conditions of participation for Title XIX shall be deemed met.

Section 2. Provision of Service. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria of patient status in that they require skilled nursing care on a continuous basis following an acute illness or as a result of a chronic disease and/or disability and are receiving such care in a participating facility.

Section 3. Determining Patient Status. Professional staff of the cabinet, or the Kentucky Peer Review Organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or non-institutional services. Patients qualify for skilled nursing care when their needs mandate skilled nursing and/or skilled rehabilitation services on a daily basis and when, as a practical matter, the care can

only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient is such that it can be safely and/or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for skilled nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas may qualify for skilled nursing care:

(1) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(2) Naso-gastric or gastrostomy tube feedings;

(3) Nasopharyngeal and tracheotomy aspiration;

(4) Recent and/or complicated ostomy requiring extensive care and self-help training;

(5) In-dwelling catheter for therapeutic management of a urinary tract condition;

(6) Bladder irrigations in relation to previously indicated stipulation;

(7) Special vital signs evaluation necessary in the management of related conditions;

(8) Sterile dressings;

(9) Changes in bed position to maintain proper body alignment;

(10) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(11) Receiving medication recently initiated, which requires skilled observation to determine desired or adverse effects and/or frequent adjustment of dosage;

(12) Initial phases of a regimen involving administration of medical gases;

(13) Receiving services which would qualify as skilled rehabilitation services when provided by or under the supervision of a qualified therapist(s), such as: on-going assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultra-sound, short-wave, and microwave therapy treatments; hot pack, hydrocollator infra-red treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

Section 4. Re-evaluation of Need for Service. Skilled nursing service shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 2 and 3 of this regulation. Patient status shall be re-evaluated at least once every six (6) months. If a re-evaluation of care needs reveals that the patient no longer requires skilled care, payment shall continue for ten (10) days to permit orderly transfer to a lesser level of care. Patients in skilled facilities who would be reclassified to intermediate care patient status except for the unavailability of an intermediate care bed, may be considered to meet patient status criteria for skilled care, so long as the patient continues to reside in that facility and providing the patient's name is placed on the waiting list of suitable facilities.

Section 5. Evaluation of Patient Status for Persons with Mental Disorders. A person with a mental disorder meeting the health status and care needs specified in Sections 2 and 3 of this regulation shall generally be considered to meet patient status. However, these individuals are specifically excluded from coverage in the following situations:

(1) When the cabinet determines that in the individual case the combination of care needs is beyond the capability of the facility, and that placement in the skilled nursing facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility and/or staff of the facility; and

(2) When the skilled nursing care needs result directly and specifically from the mental disorder; i.e., are essentially symptoms of the mental disorder.

Section 6. Reserved Bed Days. The cabinet will cover reserved bed days (effective December 1, 1984) in accordance with the following specified upper limits and criteria.

(1) Reserved bed days will be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year.

(2) Reserved bed days will be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(3) Coverage during a recipient's absence for hospitalization or leave of absence is contingent on the following conditions being met:

(a) The person is in Title XIX payment status in the level of care he/she is authorized to receive and has been a resident of the facility at least overnight. Persons for whom Title XIX is making Title XVIII co-insurance payments are not considered to be in Title XIX payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization is for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: March 14, 1985
FILED BY LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 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 April 17, 1985 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 2,400 medicaid recipients; 88 participating skilled nursing 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: $2,500 - $5,000 (costs)*
2. Continuing costs or savings: $2,500 - $5,000 (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: *We estimate no more than 5 to 10 recipients will be affected directly per year; assuming 10 reserved bed days each at $50 per day, the cost would be as shown above.

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 1:024. Intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS [13.082,] 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provision relating to intermediate care facility services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Provision of Services. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria of patient status.

Section 2. Classification of Facilities. There shall be two (2) classifications of intermediate care facilities, i.e. (i) general intermediate care facilities and (ii) intermediate care facilities for the mentally retarded and persons with related conditions.

Section 3. Definitions. The following definitions shall be applicable: (1) "Patient status," means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.
(2) "Intermittent skilled services," means the individual requires skilled nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.
(3) "Stable medical condition," means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition and/or treatment regimen.

Section 4. Determining Patient Status. Professional staff of the cabinet, or the Kentucky Peer Review Organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs and the feasibility of meeting the needs through alternative institutional or non institutional services.
(1) An individual shall be determined to meet patient status for a general intermediate care facility when the individual requires intermittent skilled nursing care, continuous personal care and/or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:
(a) An individual with a stable medical condition requiring intermittent skilled services not provided in a personal care home is considered to meet patient status.
(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution is considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus

be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet patient status for a general intermediate care facility when the professional staff determines that such combination of needs can be met satisfactorily only by provision of intermittent skilled nursing care, continuous personal care and/or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical and/or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available.
11. Services that could ordinarily be provided or administered by the individual but due to physical and/or mental condition is not capable of such self-care.
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered and/or the individual requires minimal supervision.

(e) An individual with a psychiatric primary diagnosis or needs is considered to meet patient status criteria only when the individual also has medical care needs as shown in subsection (1)(a) through (c) of this section, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility), and the individual does not require active psychiatric inpatient treatment.

(2) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical and/or environmental management and/or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly sub-average intellectual functioning who requires a planned program of active treatment to attain and/or maintain the individual's optimal level of functioning, but does not necessarily require skilled or general intermediate care facility services, is considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and sub-average intellectual functioning is considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs is considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain and/or maintain the individual's optimal level of functioning is not considered to meet patient status.

(e) It is the policy of the cabinet that no individual is to be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation), the illness or ailment must have manifested itself prior to the individual's twenty-second birthday.

Section 5. Reserved Bed Days. The cabinet will cover reserved bed days (effective December 1, 1984 for general intermediate facilities and March 1, 1982, for intermediate care facilities for the mentally retarded and persons with related conditions) in accordance with the following specified upper limits and criteria.

(1) For general intermediate care facilities, reserved bed days will be covered for a maximum of fourteen (14) days per absence for a hospital stay, with an overall maximum of forty-five (45) days <u>per provider</u> during a calendar year. Reserved bed days will be covered for a maximum of fifteen (15) days <u>per provider</u> during a calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days will be covered for a maximum of forty-five (45) days <u>per provider</u> within a calendar quarter. Reserved bed days for hospital stays may not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) may be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence is contingent on the following conditions being met.

(a) The person is in Title XIX payment status in the level of care he/she is authorized to receive and has been a resident of the facility at least overnight;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at

that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization is for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 6. Re-evaluation of Need for Service. Intermediate care shall be provided for as long as the health status and care needs are within the scope of program benefits. Patient status shall be re-evaluated at least every six (6) months. If the re-evaluation reveals that the patient's condition indicates the need for a different level of care, payment shall continue for a maximum of ten (10) days to provide for orderly transfer to the appropriate level of care.

Section 7. Hearing Rights. Any applicant/recipient determined not to meet patient status may appeal that decision in accordance with 904 KAR 1:075 or 904 KAR 2:055, as applicable.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 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 April 17, 1985 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 12,500 Medicaid recipients; 189 intermediate care and 9 intermediate care for the mentally retarded facilities participating in Medicaid.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $1,500 - $3,000 (costs)*
2. Continuing costs or savings: $1,500 - $3,000 (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: *We estimate no more than 5 to 10 recipients will be affected directly per year; assuming 10 reserved bed days each at $30 per day, the cost would be as shown above.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

PROPOSED REGULATIONS RECEIVED THROUGH MARCH 15

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 164.740 to 164.785
PURSUANT TO: KRS 13A.100, 164.748(4), (9), (10), (14)
NECESSITY AND FUNCTION: In accordance with KRS 131.565, the authority has entered an agreement with the Revenue Cabinet to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. This regulation sets forth the process for notification and appeal afforded to individuals in implementing a set off of authority claims through the Revenue Cabinet.

Section 1. Notification. The authority shall send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which set off is sought pursuant to KRS 131.560. Said notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain such additional information as the authority may prescribe. Notification shall be sent not less than thirty (30) days prior to referring the claim to the Revenue Cabinet for set off, and shall be deemed effective when placed with the Postal Service for delivery.

Section 2. Disputed Claims. (1) Any person notified pursuant to the Section 1 of this regulation may petition the authority in writing

within thirty (30) days after notification to dispute the claim of the authority. This written statement of appeal shall specify the basis on which the authority's claim is disputed, including any legal or equitable defense the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit such additional documentation as the authority may require.

(2) Upon receipt of a written statement of appeal on a timely basis, the authority, or its designated representative, shall refrain from referring the authority's claim to the Revenue Cabinet, and shall make a final written determination of the validity of the claim. The final determination shall be based on any documentation submitted by the petitioner and relevant records of the authority, which shall be made available to the petitioner upon requests. Such documentation shall constitute the record of the appeal.

(3) Upon a final determination upholding, in part or in whole, the claim of the authority, the claim may be referred to the Revenue Cabinet in accordance with KRS 131.565.

PAUL P. BORDEN, Executive Director
APPROVED BY AGENCY: February 13, 1985
FILED WITH LRC: March 14, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing regarding this regulation is scheduled to be held at 1050 U.S. 127 South, Frankfort, Kentucky on Monday, April 22, 1985, at 10 a.m. Any interested persons wishing to comment or attend the hearing pursuant to KRS Chapter 13A must submit their written comments or statement of intent to attend no later than Thursday, April 18, 1985 to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601. Absent such response from the public, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard F. Casey
(1) Type and number of entities affected: An estimated maximum of 1674 taxpayers whose student loans are in default this year. The number will vary from year to year.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Minimal
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Minimal
(3) Assessment of anticipated effect on state and local revenues: None. The regulation merely establishes a due process for appeals.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable 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: This regulation merely clarifies the administrative appeal process for taxpayers subject to tax offset process of KRS 131.565. For this reason, this regulation neither imposes costs nor results in savings. However, the tax offset process is expected to yield recovery for the state of up to $43,000 in defaulted student loans in its first year of operation at a cost of approximately $2,500 and should result in higher amounts of recovery in subsequent years.

Tiering:
Was tiering applied? No. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:019. New gas turbines.

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 stationary gas turbines.

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 stationary gas turbines contained in 40 CFR 60, Subpart GG, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, and as amended by Federal Register 49 FR 30672, July 31, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart GG are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart GG, limits emissions of nitrogen oxides and sulfur dioxide from all new stationary gas turbines that commenced construction, modification, or reconstruction after October 3, 1977. All stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired, are subjected to the provisions of this regulation.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Section 5. 401 KAR 59:018, New stationary gas turbines, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: March 12, 1985

FILED WITH LRC: March 14, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new stationary gas turbines, 40 CFR 60, Subpart GG, as amended. The federal regulation applies to all stationary gas turbines that commenced construction, modification, or reconstruction after October 3, 1977. The federal regulation was amended to specify the test methods and procedures that are to be used to determine compliance. The amendment in the test methods and procedures will not affect any sources in Kentucky. 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 in Kentucky will have the same controls as required 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: 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 September 10, 1979 (44 FR 52798), U.S. EPA promulgated a new source of performance standard (NSPS) limiting emissions of nitrogen oxides and sulfur dioxide from new stationary gas turbines. 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 59:018. In

the Federal Register of July 31, 1984 (49 FR 30672), EPA amended the regulation to specify the test methods and procedures that shall be used to determine the sulfur content of liquid and gaseous fuels (ASTM D 2880-78, D 1072-80, D 3031-81, D 4084-82 and D 3246-81). The Cabinet is promulgating this regulation to incorporate by reference the federal regulation, as amended, so that the granted delegation of authority to implement the provisions of the NSPS will continue, and the Cabinet will be able to continue to issue permits to new sources.

In addition, this regulation repeals the present regulation on stationary gas turbines (401 KAR 59:018) so that there will not be a duplication of requirements for these sources.

Tiering:
Was tiering applied? Yes. The provisions of this regulation are applicable to all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:061. New secondary brass and bronze production 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 secondary brass and bronze production 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 secondary brass and bronze production plants contained in 40 CFR 60, Subpart M, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, and as amended by Federal Register 49 FR 43618, October 30, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart M are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart M, limits emissions of particulate matter from all new secondary brass and bronze production plants that commenced constructions, modification, or reconstruction on or after June 11, 1973. The affected facilities in a secondary brass and bronze production plant are: reverberatory and electric furnaces of 1,000 Kg (2,205 lb) or greater production capacity and blast (cupola) furnaces of 250 Kg/hr (550 lb/hr) or greater production capacity.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Section 5. 401 KAR 59:060, New secondary brass and bronze ingot production plants, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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 adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new secondary brass and bronze production plants, 40 CFR 60, Subpart M. The federal regulation applies to affected facilities that commenced construction, modification, or reconstruction on or after June 11, 1973. 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 in Kentucky will have the same controls as required 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. 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: 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. 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 8, 1974 (39 FR 9309), EPA promulgated a new source performance standard (NSPS), 40 CFR 60, Subpart M, limiting emissions of particulate matter from new secondary brass and bronze ingot production plants. 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 59:060. In the Federal Register of October 30, 1984 (49 FR 43618), EPA amended the regulation to change the title of Subpart M (to Standards of Performance for Secondary Brass and Bronze Production Plants) and to specify the types of equipment and facilities in the brass and bronze ingot production plants which would be affected by this regulation. The affected facilities are: reverberatory and electric furnaces of 1,000 Kg (2,205 lb) or greater production capacity and blast (cupola) furnaces of 250 Kg/hr (550 lb/hr) or greater production capacity. Furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces, are not considered to be affected facilities. The cabinet is promulgating this regulation to adopt by reference the federal regulation, as amended, so that the granted delegation of authority to implement the provisions of the NSPS will continue and the cabinet will be able to continue to issue permits to new sources.

In addition, this regulation repeals the present regulation on new secondary brass and bronze ingot production plants (401 KAR 59:060) so that there will not be a duplication of requirements for these sources.

Tiering:
Was tiering applied? Yes. This regulation applies to reverberatory and electric furnaces of 1,000 Kg (2,205 lb) or greater production capacity and blast (cupola) furnaces of 250 Kg/hr (550 lb/hr) or greater production capacity.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:181. New automobile and light-duty truck 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 automobile and light-duty truck surface 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 automobile and light-duty truck surface coating operations contained in 40 CFR 60, Subpart MM, 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 MM are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart MM, limits emissions of volatile organic

compounds (VOC) from all new automobile and light-duty truck surface coating operations that commenced construction, modification, or reconstruction after October 5, 1979. The provisions of this regulation apply to the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation. Operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines are exempted from the provisions of this regulation.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Section 5. 401 KAR 59:180, New automobile and light-duty truck surface coating operations, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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 adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new automobile and light-duty truck surface coating operations, 40 CFR 60, Subpart MM. The federal regulation applies to the surface coating operations in an automobile and light-duty truck manufacturing plant that commenced construction, modification, or reconstruction after October 5, 1979. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. There is one existing light-duty truck assembly plant, Ford Motor Company (078-1920-0072), which if it were to undergo modification or reconstruction, would be subject to the requirements in the federal 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 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. However, cost estimates provided by the U.S. EPA for the federal regulation indicate that no new or reconstructed surface coating facilities in an automobile and light-duty truck assembly plant covered by this federal regulation will experience a significant economic impact. The maximum capital cost to implement the standards would be 0.5 percent of the capital cost of the facility. Future sources in Kentucky will have the same controls as required anywhere else in the country; therefore, there 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 60.395.

(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 December 24, 1980 (45 FR 85415), U.S EPA promulgated a new source performance standard (NSPS) limiting emissions of volatile organic compounds (VOC) from new automobile and light-duty truck surface coating operations. The federal regulation provides the types of equipment and facilities in an automobile or light-duty truck assembly plant which would be affected by this regulation. The affected facilities are: each prime coat operation, each guide coat operation, and each topcoat operation. There is one source in Kentucky which would be subject to the provisions of this regulation, if it were to undergo modification or reconstruction. That source is the Ford Motor Company (078-1920-0072), located in Jefferson County. The Air Pollution Control District of Jefferson County has concurrent jurisdiction and has approved regulations for controlling air pollution in Jefferson County. It is also responsible for issuing construction and operating permits to all sources in Jefferson County. 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 new regulation repeals 401 KAR 59:180 on new automobile and light-duty truck surface coating operations so that there will not be any overlapping of the requirements for these sources. The present regulation was based on guidance issued by the U.S. EPA, prior to the promulgation of the federal regulation.

Tiering:
Was tiering applied? Yes. This regulation applies to each prime coat operation, each guide coat operation, and each topcoat operation in an automobile or light-duty truck assembly plant. Operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines are exempted from the provisions of this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:251. New glass 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 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 glass 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 glass manufacturing plants contained in 40 CFR 60, Subpart CC, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1983, and as amended by Federal Register 49 FR 41035, October 19, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart CC are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart CC, limits emissions of particulate matter from all glass manufacturing plants that commenced construction, modification, or reconstruction after June 15, 1979. The promulgating standards apply to glass melting furnaces within the following four (4) categories of glass manufacturing plants: container glass, pressed and blown glass, wool fiberglass, and flat glass. All hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day and all-electric melters are exempt from the provisions of this regulation.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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 adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new glass manufacturing plants, 40 CFR 60, Subpart CC. The federal regulation applies to affected facilities in a glass manufacturing plant that commenced construction, modification, or reconstruction after June 15, 1979. Available information indicates that there is presently one source in Kentucky, General Electric (Somerset) (105-3460-0021), to which this regulation applies. There are two other sources, GTE Products Corporation (102-4140-0008), and General Electric (Lexington), (102-1160-0033), which if they were to undergo modification or reconstruction, would be subject to the requirements in the federal regulation. In addition, 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: Cost estimates provided by the U.S. EPA for the federal regulation are not specific to Kentucky's sources, but will be given as an estimate. The maximum additional capital investment due to the regulation, for the glass manufacturing industry as a whole, would be $8.5 million per year by 1984. Industry-wide, the average price increase for products from new plants would be about 0.7 percent. There is only one source in Kentucky immediately affected by this federal regulation. Available information indicates that this source meets the particulate emission standard under this regulation, thus no costs or savings are incurred. Future sources in Kentucky will have the same controls as required 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. However, 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: 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 7, 1980 (45 FR 66751), and October 19, 1984 (49 FR 41035), U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of particulate matter from new glass manufacturing plants. The federal regulation provides the types of equipment and facilities in glass manufacturing plants which would be affected by this regulation. The affected facility is each glass melting furnace, which includes: foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and

electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. All hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, and all-electric melters are exempted from the provisions of this regulation. 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 glass melting furnaces except hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, and all-electric melters.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:285. New metallic mineral processing 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 metallic mineral processing 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 metallic mineral processing plants contained in 40 CFR 60, Subpart LL, made effective by Federal Register 49 FR 6464, February 21, 1984, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart LL are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart LL, limits emissions of particulate matter from all new metallic mineral processing plants that commenced construction, modification, or reconstruction after August 24, 1982. A metallic mineral plant processes metallic ores into metallic concentrates containing one (1) or more of the following metals: aluminum, copper, gold, iron, lead, molybdenum, silver, titanium, tungsten, uranium, zinc and zirconium.

Section 4. Availability. (1) 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.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:
(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;
(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;
(c) Bowling Green Regional Office, 210 East Tenth Street, Bowling Green, Kentucky 42101, (502) 842-8131;
(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;
(e) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and
(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: March 12, 1985
FILED WITH LRC: March 14, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed regulation will be conducted April 30, 1985, at 10 a.m. in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, 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 adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new metallic mineral processing plants, 40 CFR 60, Subpart LL. The federal regulation applies to affected facilities in a metallic mineral processing plant that commenced construction, modification, or reconstruction after August 24, 1982. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. There are two existing blast furnaces and steel plants: Armco Steel Corporation (103-0340-0005), and SKW Inc. (072-2600-0002), which if they were to undergo modification or reconstruction, would be subject to the requirements in the federal regulation. In addition, 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. However, cost estimates provided by the U.S. EPA for the federal regulation indicate that none of the metallic mineral processing operations covered by this regulation will experience a significant economic impact. Future sources in Kentucky will

have the same controls as required anywhere else in the country; therefore, there 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 60.385.

(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 February 21, 1984 (49 FR 6464), U.S EPA promulgated a new source performance standard (NSPS) limiting emissions of particulate matter from new metallic mineral processing plants. The federal regulation provides the types of equipment and facilities in the metallic mineral processing plants which would be affected by this regulation. The affected facilities are: each crusher and screen in open pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator. All facilities located in underground mines are exempted from the provisions of this regulation. 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? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:060. Definitions; repealer.

RELATES TO: KRS 15.330
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330 authorizes the Kentucky Law Enforcement Council to prescribe standards for schools conducting law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund. This regulation provides definitions of certain terms used in 503 KAR Chapter 1, which pertains to council regulation of such training. This regulation also appeals the regulations previously in this chapter.

Section 1. Definitions. The following definitions shall apply in this chapter:

(1) "Secretary" means the Secretary of the Kentucky Justice Cabinet.

(2) "Department" means the Department of Criminal Justice Training of the Kentucky Justice Cabinet.

(3) "Council" means the Kentucky Law Enforcement Council as established in KRS 15.315.

(4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.

(5) "Fund administrator" means the person responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.

(6) "Approval" means the act of the council in deciding that requirements have been met. KRS 15.330(1)(a) and (b) authorize the council to "approve" the adequacy of schools, and of instructors at such schools, that provide courses for gaining or retaining eligibility to participate in the fund. KRS 15.330(1)(e) authorizes the council to "approve" persons as having met training requirements.

(7) "Certification" means "approval" of the

council plus the issuing of a certificate as evidence of council approval. KRS 15.330(1)(d) authorizes the council to "certify" schools and instructors as meeting requirements for conducting courses for gaining or retaining eligibility to participate in the fund.

(8) "Certified school" means a school which the Council has been approved by the council to conduct courses required to gain or retain eligibility to participate in the fund and which has been issued a certificate as evidence of the council's approval.

(9) "Recognized school" means a school which the council has not certified (e.g., the school is out-of-state), but which the council considers to provide training at least equal to the equivalent training offered by the department.

(10) "Certified instructor" means a person who has been approved by the council to instruct at certified schools and to whom the council has issued a certificate as evidence of its approval.

(11) "Trainee" means a person participating in training as a student.

Section 2. Repealer. 503 KAR 1:010, 1:020, 1:030, 1:040 and 1:050 are hereby repealed.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons reading 503 KAR Chapter 1
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The definitions and repealer apply generally.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:070. Training: qualifications; application.

RELATES TO: KRS 15.330(1)(c)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(c) authorizes the Kentucky Law Enforcement Council to prescribe qualifications for attendance at schools certified by the council to conduct those law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund. This regulation prescribes qualifications for attending law enforcement courses at certified schools and forms to be used and procedures to be followed in applying for admission to such courses.

Section 1. Admission Qualifications. A certified school, as allowed by law, shall have the authority to decide what persons are qualified to enroll in its courses. (But only a police officer, as defined in KRS 15.420(2), shall gain or retain eligibility to participate in the fund by completing a course at a certified or recognized school.)

Section 2. Application for Basic Training. (1) Each applicant for a basic training course at a school certified by the council must submit a completed KLEC Form 29, "Application for Basic Training," and a completed KLEC Form 30, "Medical Examination Form" to the school no less than thirty (30) days prior to the first day of the course. (These forms are available from the school - for example, the Department of Criminal Justice Training, 107 Stratton Building, Eastern Kentucky University, Richmond, Kentucky 40475.) Failure to submit the forms in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement and admit an applicant on shorter notice.

(2) Medical examination form requirements. The KLEC Form 30, "Medical Examination Form," shall be completed no sooner than 120 days before the date on which the basic training course begins. The KLEC Form 30, "Medical Examination Form," shall contain the opinion of a licensed physician as to the applicant's ability to participate in the physical activities of basic training as described in the form. No applicant shall be admitted to a basic training course without a completed KLEC Form 30.

Section 3. Application for In-service Training. Each applicant for an in-service training course at a school certified by the council must submit a completed KLEC Form 28,

"Application for In-service Training," to the school not less than thirty (30) days prior to the first day of the course. (This form is available from the school - for example, the Department of Criminal Justice Training, 107 Stratton Building, Eastern Kentucky University, Richmond, Kentucky 40475.) Failure to submit the form in the prescribed manner or within the prescribed time shall be justification for denying admission to the course. The director of the school or his designee, if he deems it justified by unusual circumstances, may waive the thirty (30) day requirement and admit an applicant on shorter notice.

Section 4. Falsification of Application. Knowing or willful falsification of an application to a council-approved course shall be justification for denying admission to the course.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons who apply for training
(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: Completing application forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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 adminjstrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all applicants.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a)(d)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund. KRS 15.330(1)(d) authorizes the council to issue certificates to such schools. This regulation prescribes standards and procedures for such approval and for certifying such approval.

Section 1. Application Procedures. Any agency, group or individual may make application to the council to establish a certified basic training school, a certified in-service training school, or both. All applications shall be made in writing and shall set forth detailed facts as prescribed by the Council and shall include, but not be limited to: the curriculum, the instructors, the facilities, and the equipment. (The school certification application form - KLEC Form 3 - is available from, and should be submitted to, the Kentucky Law Enforcement Council, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.)

Section 2. Review of Application. Upon receiving a properly completed application for certification of a school, the council shall conduct an on-site inspection of the facility and equipment and shall thoroughly examine the curriculum and instructors of the applying school. The council shall in the course of its inspection determine whether the applying school offers training at least equal to the equivalent training provided by the department. The council shall also determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality. Applying schools which have been found to be deficient in any area shall not be certified.

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. Within thirty (30) days of the council's vote, the council shall notify in writing the applying school and the fund administrator whether the applying school was approved. If an applying school has been approved, the council shall issue a certificate stating that the applying school has been certified and the type of training course(s) that shall be offered - basic or in-service or both.

Section 5. Inspections. Any school certified

by the council shall be subject to inspection by the council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. A school's certification shall be revoked by the council whenever a school has been found not to have maintained the standards required for certification. If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council within fifteen (15) days. The council shall recertify a school only when the council has determined that all deficiencies have been corrected.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those schools which apply for certification
(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: Completing application forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all applicants.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:090. Approval of course curriculums.

RELATES TO: KRS 15.330(1)(a)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for the approval and continuation of approval of schools which conduct law enforcement training courses required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund, including minimum standards for curriculums for such courses. This regulation prescribes standards and procedures for such approval.

Section 1. Council Authority. The council shall have the authority to review all curriculums for all law enforcement courses to be provided by all schools certified by the council.

Section 2. Submission Requirements. All proposed curriculums or proposed amendments to previously approved curriculums shall be received by the council at least thirty (30) days prior to the date of anticipated review. (The curriculum approval form - KLEC Form 31 - is available from, and should be submitted to, the Kentucky Law Enforcement Council, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.)

Section 3. School Endorsement. All course curriculums and amendments to course curriculum submitted by a school shall be endorsed by the director of the school or his designee.

Section 4. Approval Procedure. Upon review of the proposed course curriculum or curriculum amendment, the council shall vote whether to approve, approve subject to state conditions, or disapprove. Course curriculum approval shall last for only three (3) years; curriculums approved before the effective day of this regulation shall remain approved until three (3) years after the effective date. Curriculums which are to be continued shall be resubmitted for approval at least ninety (90) days before the expiration of the three (3) year period.

Section 5. Notification of Council Action. Within thirty (30) days of the council's vote, the council shall notify in writing the school which submitted the curriculum and the fund administrator whether the curriculum or curriculum amendment was approved.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those schools submitting curriculums.
(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: Completing approval forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all curriculums.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a)(b)(d)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(a), (b) and (d) authorize the Kentucky Law Enforcement Council to certify instructors at certified schools. This regulation prescribes standards and procedures for such certification.

Section 1. Council Authority. The council shall have the authority to certify all persons instructing in law enforcement training courses at certified schools. However, since KRS 15.330(1)(b) provides that institutions of higher education shall be exempt from council requirements, representatives of such institutions may instruct at a certified school without council certification.

Section 2. Application for Certification. Applications for certification and for certification renewal shall be made to the council. (The instructor certification form - KLEC Form 1 - is available from, and should be submitted to, the Kentucky Law Enforcement Council, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.) To become certified, an applicant must meet the following requirements:
(1) Have three (3) years of law enforcement experience or experience in the specific field, subject matter or academic discipline to be taught; and
(2) Have earned a high school diploma or its equivalent as determined by the council.

Section 3. Application Process. Applications for instructor certification and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the applicant.

Section 4. Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section 5. Instructor Certificate. The council shall issue a certificate stating that the person has been approved to instruct.

Section 6. Denial of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause. Any instructor who fails to instruct during the one (1) year period of certification shall be required to apply for reinstatement of certification and to meet such requirements as are deemed necessary by the council. When the council denies certification to an applicant or revokes certification or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section 7. Length of Certification. Certification shall be for a period of one (1) year. At the end of the one (1) year period, certification may be renewed by the council if the instructor has instructed in an approved course provided by a certified school during that year and if the instructor, if he instructed at a certified school, has been recommended by the director of the certified school. After five (5) years of continuous certification, the council may certify an instructor for a five (5) year period.

Section 8. Monitoring of Instructors. The council shall, when practical, monitor each instructor during the one (1) year period of certification to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section 9. Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published in the form of a notebook, allowing for changes through the use of supplements. The council shall publish annual supplements to the directory by December 31 of each year and the supplements shall include all certification

changes, including additions, deletions and renewals, for the year. The council shall provide each certified school and the fund administrator with a copy of the directory.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons who apply for certification.
(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: Completing certification forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all applicants.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:110. Basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(e), 15.440(4)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(4) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers employed on or after July 1, 1972, to successfully complete at least 400 hours of basic training within one (1) year of the date of employment at a school certified or recognized by the council. This regulation prescribes requirements for graduation from a basic training course and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. A trainee in a basic training course shall participate in a minimum of 400 hours of training. A trainee may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence from the course which causes a trainee to miss any of the 400 hours of basic training shall be made up through an additional training assignment. To successfully complete a basic training course, a trainee must:
(1) Participate in a minimum of 400 hours of training.
(2) Pass the final examination.
(3) Pass practical proficiency examinations in the use of firearms, in the operation of a police vehicle, in the mechanics of arrest, restraint and control (M.A.R.C.), and in first aid. Failure of any one (1) of these four (4) examinations shall constitute failure of the entire course.
(4) In regard to examinations other than those considered in subsections (2) and (3) of this section, fail no more than one (1) such examination. That is to say, failing two (2) of the examinations considered in this subsection (such as weekly examinations) shall constitute a failure of the course.
(5) Comply with all rules and regulations of the certified school, the fund, and the council. A trainee who fails to meet the requirements of subsection (3) or (4) of this section shall be immediately dismissed from the course.

Section 2. Maintenance of Records. A certified school shall, at the conclusion of each basic training course, complete in triplicate the KLEC Form 29, "Application for Basic Training," for each trainee who has attended the course. The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council for central training records purposes. All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building,

Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons who apply for admission.
(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: Completing approval forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all applicants.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:120. In-service training: graduation requirements; recognized courses; records.

RELATES TO: KRS 15.330(1)(e), 15.440(5)
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(5) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the Council. This regulation prescribes requirements for graduation from an in-service training course and for maintenance of in-service training records and establishes procedures for recognizing training at non-certified schools.

Section 1. In-Service Training Graduation Requirements. A trainee in an in-service training course shall participate in the minimum hours prescribed for the course. A trainee may have excused absences from the course with prior approval of the director of the certified school or his designee. An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall be allowed excused absences from no more than twenty (20) percent of the hours of an in-service course. To successfully complete an in-service training course, a trainee must:
(1) Participate in at least the minimum hours prescribed for the training course.
(2) Pass the final examination.
(3) Pass all required projects, practical examinations, and exercises.
(4) Comply with all rules and regulations of the certified school, the fund and the council.

Section 2. In-Service Training Courses at Recognized Schools. The council shall have the authority to recognize schools providing in-service training which are not certified by the council. A trainee who desires to attend an in-service training course at a school that is not certified shall make a written request to the council at least thirty (30) days prior to the first day of the course. The council shall have the authority to grant a request made after the course has been attended, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course. The council shall review the request and determine whether the school and the course shall be recognized based upon the following:
(1) The quality and reputation of the training school or institution;
(2) The relationship of the course to the officer's rank and responsibility; and
(3) The unavailability of the course at a certified school. If, upon review of the request, the council determines that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency, the department, and the fund administrator of its action. A trainee who fails to meet requirements established by the council for attendance at the recognized course shall not have met the requirements of KRS 15.440(5).

Section 3. Maintenance of Records. A certified school shall, at the conclusion of each in-service training course, complete in triplicate the KLEC Form 28, "Application for In-Service Training," for each trainee who has attended the course. The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council for central training records purposes. All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with

standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons who apply for admission.
(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: Completing application forms
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or requirements
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all applicants.

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:130. Review of council and school decisions; appeal to circuit court.

RELATES TO: KRS 15.330
PURSUANT TO: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330 authorizes the Kentucky Law Enforcement Council to prescribe standards for law enforcement training conducted by certified schools. 503 KAR Chapter 1 prescribes such standards. Decisions by the council and by certified schools involving the interpretation of the statute and the regulations obviously affect persons. A person adversely affected by such a decision should have the right to have it reviewed by higher authority. This regulation establishes a procedure for administrative review and appeal to the court system.

Section 1. Administrative Review. A person adversely affected by a decision of the council or a certified school as to enforcement of standards or procedures prescribed by KRS 15.330 and/or 503 KAR Chapter 1 shall have the right to ask the secretary to review the decision. A request for a hearing shall be filed in writing with the secretary within thirty (30) days of receipt of written notification of the council or school decision. The secretary shall, within thirty (30) days of receipt of the request, decide if the request merits a hearing. If it is determined there are insufficient grounds for a hearing, the secretary shall notify the person in writing that the request has been denied. If a hearing is to be held, the secretary shall designate the time and place. The hearing shall be held within ninety (90) days of receipt of the request for a hearing, and it shall be conducted by the secretary or his designated hearing officer. If a hearing officer conducts the hearing, he shall submit findings of fact, conclusions of law and a recommended decision to the secretary. At the hearing, all parties to the controversy shall have the right to be heard publicly and to be represented by counsel, and all testimony shall be recorded. Technical rules of evidence shall not apply at the hearing. Within sixty (60) days following the hearing. the secretary shall issue a written opinion, a copy of which shall be provided to all parties and to the fund administrator. The decision of the secretary shall be final unless appealed into the court system.

Section 2. Appeal to Circuit Court. A person adversely affected by the decision of the secretary resulting from a hearing provided for in Section 1 of this regulation, or by the secretary's decision to deny a request for such a hearing, shall have the right to appeal the secretary's decision to the circuit court of the county where the controversy originated.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons who ask for a hearing.
(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: Completing written requests for hearings.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: As required for hearings and appeals.
(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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all adversely affected parties.

JUSTICE CABINET
Law Enforcement Foundation Program Fund

503 KAR 5:080. Definitions; repealer.

RELATES TO: KRS 15.410 to 15.510
PURSUANT TO: KRS 15.450(1)
NECESSITY AND FUNCTION: This regulation provides definitions of certain terms as used in 503 KAR Chapter 5, which pertains to the Law Enforcement Program Foundation Fund. This regulation also repeals the regulations previously in this chapter.

Section 1. Definitions. The following definitions shall apply in this chapter:
(1) "Cabinet" means the Kentucky Justice Cabinet.
(2) "Secretary" means the Secretary of the Kentucky Justice Cabinet.
(3) "Council" means the Kentucky Law Enforcement Council as established in KRS 15.315.
(4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.
(5) "Fund administrator" means the person responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.
(6) "Salary supplement funds" means money disbursed from the fund to local units of government for salary supplement purposes. A "salary supplement" is the fund money disbursed by a local unit of government to an individual police officer.
(7) "Local unit" means the local unit of government of any city or county, or any combination of cities and counties of the Commonwealth.
(8) "Police officer" means a "full-time member" (defined below) of a "lawfully organized police department" (defined below) of county, urban-county, or city government who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer, sheriff, deputy sheriff, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
(9) "Full-time member" means a sworn police officer who is paid a salary by the local unit for "working regularly" (defined below) as a law enforcement officer.
(10) "Working regularly" means the officer is working a minimum of forty (40) hours a week according to a uniform weekly schedule that is standard for police officers employed by that employing agency. No local unit shall arrange, by reduction of weekly hours or otherwise, the employment of a person who is otherwise considered a police officer so as to subvert the intent and purpose of KRS 15.410 to 15.510 or these regulations.
(11) "Lawfully organized police department" means a law enforcement unit organized in accordance with statutory authority, and one which has a separate and identifiable physical and management identity from other law enforcement units, including a separate chief.
(12) "Termination of police service" means ending employment as a police office (due to resignation, dismissal, etc.) but does not include a transfer from one (1) police agency to another when such transfer is made without intervening employment in a non-police officer capacity.

Section 2. Repealer. 503 KAR 5:010, 5:020, 5:030, 5:040, 5:050, 5:060 and 5:070 are hereby repealed.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons reading 503 KAR Chapter 5
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The definitions and repealer apply generally.

JUSTICE CABINET
Law Enforcement Foundation Program Fund

503 KAR 5:090. Participation: requirements; application; withdrawal.

RELATES TO: KRS 15.440
PURSUANT TO: KRS 15.450(1)
NECESSITY AND FUNCTION: KRS 15.440 prescribes requirements to be met by a local unit of government in order to be eligible to receive salary supplement funds from the Law Enforcement Foundation Program Fund. This regulation expands on the statutory requirements for eligibility and establishes the procedure to be followed by a local unit in applying for admission to, or withdrawing from, the fund.

Section 1. Requirements for Participation in the Fund. Eligibility to participate in the fund is limited to local units of government meeting the following requirements:
(1) Number of police officers employed. KRS 15.440(1) requires the local unit to employ one (1) or more police officers.
(2) Minimum salary of police officers. KRS 15.440(2) requires the local unit to pay every police officer a minimum annual salary of $4,350.
(3) Minimum education requirement.
(a) KRS 15.440(3) requires the local unit to require, as a minimum educational standard for the employment of police officers, a high school degree, or its equivalent as determined by the council. However, a police officer employed prior to July 1, 1972, does not have to meet this requirement - he is "grandfathered" into the fund.
(b) A copy of the high school diploma or if its equivalent (e.g., a General Education Diploma) shall be sent to the fund administrator, by the local unit, along with the initial notification that the officer has been employed.
(c) If a police officer who is "grandfathered" into the fund without having to meet the educational requirement of KRS 15.440(3) has his police service terminated (due to resignation, dismissal, etc.), and he remains separated from employment as a police officer for more than two (2) years, he must meet the educational requirement in order to become eligible to be reemployed as a police officer by a local unit which is participating in the fund.
(4) Basic training requirement.
(a) KRS 15.440(4) requires the local unit to require all police officers employed on or after July 1, 1972, to successfully complete a basic training course of at least 400 hours duration, within one (1) year of the date of employment, at a school certified or recognized by the council.
(b) A local unit that elects to participate in the fund shall require all police officers employed as of the date of the initial participation to meet the basic training requirement (or obtain credit for meeting it) within one (1) year of the date of initial participation. All officers employed thereafter shall meet the basic training requirement (or obtain credit for meeting it) within one (1) year of the date of employment. The local unit shall not be considered to be in violation of this paragraph if an officer's failure to meet the basic training requirement (or obtain credit for meeting it) within one (1) year is due to circumstances beyond his control, such as injury, illness, or personal tragedy; in this situation, the officer shall be required to meet the basic training requirement (or obtain credit for meeting it) within a reasonable time (not to exceed one (1) year from the termination of the extenuating circumstances), as determined by the fund administrator or his designee, or the local unit shall be in violation of this paragraph.
(c) A police officer who is employed before July 1, 1972, does not have to meet the basic training requirement (or obtain credit for meeting it) - he is "grandfathered" into the fund under KRS 15.440(4).
(d) Obtaining credit for basic training; evaluation committee; evaluation examination. A police officer who, as of his date of employment, has already successfully completed a law enforcement basic training course may, for the purpose of obtaining credit for some or all of the basic training requirement, apply to the fund administrator to take a basic training evaluation examination. (Forms and information are available from the Kentucky Law Enforcement Foundation Program Fund, 107 Stratton Building, Eastern Kentucky University, Richmond, Kentucky 40475.) Upon receipt of an evaluation examination request, the fund administrator or his designee shall immediately refer the request to an evaluation committee consisting of the Dean of the Eastern Kentucky University College of Law Enforcement (representing the council), the director of the administrative division of the department; which committee shall meet as necessary to carry out its duties as created by this paragraph. This committee shall verify that the officer has successfully completed a basic training course. The officer and his local unit shall be responsible for providing such proof as is needed by the committee. Upon verification, the committee shall have the fund administrator or his designee notify the officer that he is eligible to take a basic training evaluation examination. The committee shall administer and evaluate the examination. The examination shall test the officer in the areas required for successful completion of a council-approved basic training course. The committee shall then

decide what training, if any, the officer must successfully complete in order to meet the basic training requirement. An officer who passes less than fifty (50) percent of the examination areas shall obtain no basic training credit at all. An officer who passes at least fifty (50) percent of the examination areas shall obtain basic training credit for the areas which he passes. The committee shall have the fund administrator or his designee notify the officer of its decision. The officer shall be responsible for arranging any required basic training at a council-approved school.

(e) If a police officer who is qualified to participate in the fund has his police service terminated (due to resignation, dismissal, etc.), and he remains separated from employment as a police officer for more than two (2) years; he must, if reemployed as a police officer, meet the basic training requirement (or obtain credit for meeting it) before he shall be eligible to participate in the fund again. The two (2) year grace period also shall apply to an officer who has been "grandfathered" into the fund under KRS 15.440(4).

(5) In-service training requirement.

(a) KRS 15.440(5) requires the local unit to require all police officers, whether originally employed before or after July 1, 1972, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours duration at a school certified or recognized by the council.

(b) A local unit that elects to participate in the fund shall require all police officers employed as of the date of initial participation, and all officers employed thereafter, to successfully complete the in-service training requirement each calendar year. The local unit shall not be considered to be in violation of this paragraph if an officer's failure to meet the in-service training requirement in a calendar year is due to circumstances beyond his control, such as injury, illness, or personal tragedy; in this situation, the officer shall be required to meet the in-service training requirement within a reasonable time (not to exceed one (1) year from the termination of the extenuating circumstances), as determined by the fund administrator or his designee, or the local unit shall be in violation of this paragraph. If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year; the fund administrator or his designee shall notify the local unit that the officer must make up the in-service training for the year of delinquency within a reasonable time, as determined by the fund administrator or his designees or else the local unit, if it continues to employ the officer full time, shall be in violation of this paragraph and shall lose its eligibility to participate in the fund. If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year, he shall receive no salary supplement until he makes up the in-service training for the year of delinquency.

(c) The local unit shall provide at least five (5) days leave with pay, not chargeable against the officer's annual leave allotment, for each police officer attending in-service training.

(d) A police officer who meets the basic training requirement (or obtains credit for meeting it) shall be considered to have fulfilled the in-service training requirement for the calendar year in which the basic training is successfully completed or the credit is obtained.

(e) If a police officer who is qualified to participate in the fund has his police service terminated (due to resignation, dismissal, etc.) before he meets his in-service training requirement for the calendar year, he shall still be eligible to participate in the fund for that part of the calendar year during which he was employed as a police officer.

(f) If a police officer who is qualified to participate in the fund has his police service terminated (due to resignation, dismissal, etc.), but is reemployed as a police officer, he shall regain eligibility to participate in the fund as soon as he meets the in-service training requirement for the year in which reemployed. If the remploying is not within two (2) years, he must meet the basic training requirement (or obtain credit for meeting it); see subsection (4)(e) of this section.

(g) A police officer may not, for fund eligibility purposes, take the same in-service training course that he has successfully completed in a previous year for fund eligibility purposes unless at least three (3) years have passed since the earlier course was completed.

(6) Compliance with the law.

(a) KRS 15.440(6) requires the local unit to comply with all provisions of the law applicable to local police, including transmission of criminal information and statistics to the state as required by KRS 17.150.

(b) KRS 15.440(7) requires the local unit to comply with all reasonable rules and regulations, appropriate to the size and location of the local police department, issued by the cabinet to facilitate the administration of the fund.

(c) KRS 15.440(8) provides that a local unit's eligibility to participate in the fund shall continue only if the local police department actually begins and continues to comply with the requirements of KRS 15.440.

(7) Local ordinance requirement. To be eligible to participate in the fund, a local unit shall enact an ordinance or resolution requiring the local unit and police department to comply with KRS 15.410 to 15.510 and with these regulations. A certified copy of this local ordinance or resolution shall be submitted by the local unit to the fund administrator along with the application for participation in the fund.

Section 2. Application. A local unit desiring to apply for admission to the fund shall submit an application form to the fund administrator. (This form is available from the Kentucky Law Enforcement Foundation Program Fund, 107 Stratton Building, Eastern Kentucky University, Richmond, Kentucky 40475.)

Section 3. Withdrawal. To withdraw from the fund, a local unit shall send a written notice of withdrawal to the Fund administrator. The

fund administrator or his designee shall acknowledge in writing the receipt of the withdrawal notice; the withdrawl shall be effective as of the date the withdrawal notice is received by the fund administrator. Upon withdrawal, a local unit shall be obligated to return all salary supplement funds received from the fund for which its police officers have not yet become qualified.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Local units of government participating in the Law Enforcement Foundation Program Fund.
(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: Completing applications; recordkeeping.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all local units.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 503 KAR 5:090
SUBJECT/TITLE: Law Enforcement Foundation Program Fund (LEFPF) - Participation: requirements; application; withdrawal.
SPONSOR: Justice Cabinet
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requires local police to participate in training in order for their local unit of government to receive LEFPF money.
LEVEL(S) OF IMPACT: City; County; Urban County Government
BUDGET UNIT(S) IMPACT: N/A
FISCAL SUMMARY:
MEASURE'S PURPOSE:
PROVISION/MECHANICS: No fiscal effect; local units of government are merely conduits between LEFPF and individual police officers.
FISCAL EXPLANATION:

JUSTICE CABINET
Law Enforcement Foundation Program Fund

503 KAR 5:100. Disbursement of salary supplement funds; audits.

RELATES TO: KRS 15.460, 15.470, 15.490, 15.500(1)
PURSUANT TO: KRS 15.450(1)
NECESSITY AND FUNCTION: KRS 15.460, 15.470 and 15.500(1) pertain to disbursements from the Law Enforcement Foundation Program Fund; KRS 15.490(1) pertains to reports from local units to the Justice Cabinet; and KRS 15.490(2) pertains to payroll deductions. This regulation expands on these disbursements, reporting, and recordkeeping provisions.

Section 1. Disbursement from Fund to Local Unit. (1) Local unit's entitlement. Upon becoming eligible to participate in the fund, a local unit is entitled to receive annually, from the fund, salary supplement funds of $2,500 for each qualified police officer it employs. If the fund is insufficient to provide funds at this rate, the cabinet shall establish the rate to be paid to the local units.
(2) Procedural requirements.
(a) A participating local unit shall submit to the fund administrator, within five (5) working days of the action, personnel action forms containing the information (hirings, firings, etc.) required by the fund administrator or his designee in order to determine the amount of salary supplement funds to be disbursed to the local unit.
(b) The fund administrator or his designee shall mail fund checks promptly to all eligible local units which have submitted timely personnel action forms.
(c) The disbursement from the fund to the local unit shall be a reinbursement for salary supplements already paid by the local unit to individual police officers. Local units shall apply for reimbursement of funds on forms provided for this purpose by the fund administrator or his designee. The local unit shall be required to acknowledge, to the Fund administrator, receipt of funds on forms provided for this purpose.
(d) Local units shall provide such other information and reports as the fund administrator or his designee reasonably deems necessary.

Section 2. Disbursement from Local Unit to Police Officer. (1) Purposes for which local unit may use funds. The funds shall be used only as a cash salary supplement to police officers

who meet the qualifications established by statute and by this regulation. The funds shall not be used to supplant existing salaries or as a substitute for normal salary increases. The funds shall be received, held, and expended only in accordance with the law.

(2) Qualifications for receiving a salary Supplement. In order to be entitled to receive a salary supplement from a local unit, a person must be:

(a) A "police officer" - that is, a "full-time member" of a "lawfully organized department" of county, urban-county, or city government (for definitions, see 503 KAR 5:080); and

(b) Employed by a local unit of government which is eligible to participate in the fund. (For participation requirements for local units, see 503 KAR 5:090.)

(3) Determining the amount of the salary supplement.

(a) Each police officer shall be paid by his local unit that amount of money which is paid from the fund to the local unit because of his qualifications. Thus a qualified officer who is employed "full time" for an entire year shall entitle his local unit to receive $2,500 (or, if the fund is insufficient to provide funds at this rate, the amount established by the cabinet), and he shall be paid this same amount by his local unit.

(b) Funds shall be disbursed from the fund to local units on a monthly basis, and a police officer's salary supplement shall be determined on a monthly basis (for example, $208.33 per month if the annual supplement is $2,500). If an officer works less than a full month, his salary supplement shall be determined on a hourly basis. The hourly rate shall be determined by dividing the annual supplement of 2,080 (fifty-two (52) weeks multiplied by forty (40) hours per week); therefore, if the annual supplement is $2,500, the hourly supplemental rate shall be $1.20 for each hour he receives salary from his local unit.

(c) Salary, for salary supplement purposes, shall include pay for leave (such as annual, sick, compensatory, military, civil or educational leave). Leave without pay shall not be included.

(d) A police officer shall be paid a salary supplement while suspended from duty with pay, but shall not be paid one while suspended without pay.

(e) A police officer shall not be paid a salary supplement for pay for overtime work (hours over forty (40) per week).

(f) A police officer, provided he is qualified to participate in the fund during the period, shall be paid a salary supplement for that period of time during which he is not receiving a salary but is receiving workers' compensation benefits. This salary supplement shall be determined at the same monthly rate and, if a time period of less than a month is involved, hourly rate as is provided for in subsection (3)(b) of this section.

(g) The local unit shall keep hourly-employment records to document;

1. That a police officer is "full time" and thus qualifies for a salary supplement, and;

2. The salaried hours (work, leave with pay, suspension with pay, etc.) of each officer receiving a salary supplement.

(4) Payroll deductions. Under KRS 15.490(2), local units shall include the salary supplement paid to a police officer from the fund as a part of the officer's salary in determining all payroll deductions.

Section 3. Audit of Local Unit. (1) The Cabinet shall have the authority to audit, or to authorize an audit, of local units receiving salary supplement funds.

(2) For audit purposes, the local unit shall maintain accurate financial records which shall include, but not be limited to, books of original entry, source documents supporting accounting transactions, a general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records.

(3) These records shall be retained by the local unit until destruction is authorized by the cabinet.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: March 11, 1985

FILED WITH LRC: March 11, 1985 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley

(1) Type and number of entities affected: Local units of government receiving salary supplement funds; police officers receiving salary supplements.

(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: Local units: submitting personnel action forms, bookkeeping, financial reporting.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. Procedures are general - they are the same for all local units and police officers.

JUSTICE CABINET
Law Enforcement Foundation Program Fund

503 KAR 5:110. Suspension or termination of salary supplement funds; criminal penalties.

RELATES TO: KRS 15.450(2), 15.990
PURSUANT TO: KRS 15.450(1)
NECESSITY AND FUNCTION: This regulation expands on the suspension or termination authority given the Justice Secretary by KRS 15.450(2) and on the criminal penalties provided by KRS 15.990 for fraudulent activity in regard to the Law Enforcement Foundation Program Fund.

Section 1. Suspension or Termination of Salary Supplement Funds. (1) Under KRS 15.450(2), the secretary or his designated representative shall have the authority to withhold or terminate the disbursement of salary supplement funds to any local unit that fails to comply with the requirements of KRS 15.410 to 15.510 or these regulations. Such a failure to comply shall also be justification for requiring the return of all funds received by the local unit while in noncompliance.
(2) Suspension or termination of salary supplement funds and the return of all funds involved may also result from a local unit knowingly furnishing false information required by KRS 15.410 to 15.510 or these regulations.

Section 2. Criminal Penalties. KRS 15.990 provides that any person who knowingly or wilfully makes any false or fraudulent statement or representation in any record, report, or application to the Council, Department, or other agency of the Cabinet under KRS 15.410 to 15.510 shall be fined not less than $100 nor more than $500, or imprisoned for not less than thirty (30) days nor more than ninety (90) days, or both. This statute may be used to prosecute a police chief, mayor, city manager, city clerk or anyone else who fraudulently receives, or attempts to receive, salary supplement funds for a local unit.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Local units of government and any individuals who fail to comply with 503 KAR Chapter 5 or the statutes upon which it is based.
(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:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional 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: None

Tiering:
Was tiering applied? No. The disciplinary actions apply generally.

JUSTICE CABINET
Law Enforcement Foundation Program Fund

503 KAR 5:120. Review of fund administrator's decisions; appeal to circuit court.

RELATES TO: KRS 15.410 to 15.510
PURSUANT TO: KRS 15.450(1)
NECESSITY AND FUNCTION: KRS 15.510 provides for appeal to circuit court from a cabinet decision to withhold or terminate fund payments to local units. This regulation expands on the appeal procedure and, in order to resolve potential court actions, establishes a procedure for administrative review of decisions made by the secretary's designated fund administrator or his designee.

Section 1. Administrative Review. A person or a local unit adversely affected by a decision of the secretary's designated fund administrator or his designee made pursuant to administration of the provisions of KRS 15.410 to 15.510 and these regulations shall have the right to ask the secretary to review the decision. A request for a hearing shall be filed in writing with the secretary within thirty (30) days of receipt of written notification of the decision by the fund administrator or his designee. The secretary shall, within thirty (30) days of receipt of the request, decide if the request merits a hearing. If it is determined there are insufficient grounds for a hearing, the secretary shall notify the person or local unit in writing that the request has been denied. If a hearing is to be held, the secretary shall designate the time and place. The hearing shall be held within ninety (90) days of receipt of the request for a

hearing, and it shall be conducted by the secretary or his designated hearing officer. If a hearing officer conducts the hearing, he shall submit findings of fact, conclusions of law and a recommended decision to the secretary. At the hearing, all parties to the controversy have the right to be heard publicly and to be represented by counsel, and all testimony shall be recorded. Within sixty (60) days following the hearing, the secretary shall issue a written opinion, a copy of which shall be provided to all parties. The decision of the secretary shall be final unless appealed into the court system.

Section 2. Appeal to Circuit Court. A person or local unit adversely affected by a decision of the secretary resulting from a hearing provided for in Section 1 of this regulation, or by a decision of the secretary to deny a request for such a hearing, or by a decision of the secretary made pursuant to administration of the provisions of KRS 15.410 to 15.510 and these regulations, shall have the right to appeal the secretary's decision to the circuit court of the county where the controversy originated.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: March 11, 1985
FILED WITH LRC: March 11, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on April 22, 1985, at 10 a.m. in Room 335, Stratton Building, Eastern Kentucky University, Richmond, Kentucky. Those interested in attending this hearing shall notify in writing: Marshall Saufley, Assistant Director, Administrative Division, Department of Criminal Justice Training, 107 Stratton, E.K.U., Richmond, Kentucky 40475.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marshall Saufley
(1) Type and number of entities affected: Those persons asking for a hearing.
(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: Completing written requests for hearings.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional costs or savings
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: As required for hearings and appeals.
(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: None

Tiering:
Was tiering applied? No. Standards are general - they are the same for all adversely affected parties.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 5:130. Vehicles designed to carry fewer than ten passengers, standards for.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt regulations relating to the transportation of children to and from school and those deemed necessary or advisable for the protection of the physical welfare and safety of public school children. This regulation establishes the guidelines and requirements relative to the transportation of pupils by local school districts in vehicles designed to carry fewer than ten (10) passengers and which are not classified as school buses.

Section 1. For the purpose of this regulation, the word "vehicle" shall mean any vehicle owned by a school district board or contracted to the board which is significantly used to transport pupils to and from school or school related events and which is designed by the manufacturer to carry fewer than ten (10) passengers.

Section 2. Before any vehicle owned by a school district board or contracted to the board is used to transport pupils, the superintendent of a local school district shall request permission from the Division of Pupil Transportation for authorization to use such vehicle; and when the vehicle has been approved, it shall be entered on the district's school bus inventory.

Section 3. Any vehicle owned by a school district board or contracted to the board shall be restricted to the transportation of pupils from areas not accessible to a regular school bus to the nearest road available for safe transfer of pupils to a regular school bus or vise versa; provided, that this requirement shall not apply to transportation of qualifying handicapped pupils or emergency transportation of pupils.

Section 4. No vehicle owned by a school district board or contracted to the board shall be used to carry more pupils than the manufacturer's designed passenger capacity for that particular vehicle.

Section 5. Each vehicle owned by a school district board or contracted to the board shall have seat belts equal in number to the manufacturer's designed passenger capacity and installed in accordance with the original equipment manufacturer's specifications.

Section 6. Liability or indemnity insurance

shall be purchased for each vehicle owned by the school district board or contracted to the board. The coverage limits should be at least these minimum amounts: (Reference 702 KAR 5:070, Section 2)

Property Damage Each Accident	$100,000
Bodily Injury Liability Per Person	250,000
Bodily Injury Liability Per Accident	1,000,000
Uninsured Motorist Coverage	Allowable Limit Per Person-Per Accident
"No-fault" Coverage Per Person	10,000

Section 7. Before any vehicle owned by the school district board or contracted to the board is initially used to transport pupils, a safety inspection shall be made on the vehicle by a competent person to certify the vehicle is in safe operating condition. If the vehicle is found to be in unsafe operating condition, it shall not be used to transport pupils until necessary repairs are made. (Reference 702 KAR 5:030, Section 2)

Section 8. Each vehicle owned by the school district board or contracted to the board shall be inspected at least once each month that the vehicle is used to transport pupils, utilizing the same criteria for inspection as for standard school buses.

Section 9. Each vehicle owned by the school district board or contracted to the board when being used to transport pupils shall display a sign in clear view in the rear of the vehicle stating: This vehicle is being used to transport school children.

Section 10. The school district board shall, each school year, provide the owner of any vehicle that is contracted to the board with a written contract in which the responsibilities of the contractor are clearly defined. A copy of the contract and the method of determining the contract award shall be kept on file in the superintendent's office.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8:00 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9:00 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sam Jackson
(1) Type and number of entities affected: All local school districts who utilize non-school bus vehicles to transport school children.
(a) Direct and indirect costs or savings to those affected: Unable to estimate (See attached)
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: Approval request and inventory form.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Unable to estimate - See attached
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Approval request and inventory form.
(3) Assessment of anticipated effect on state and local revenues: Unable to estimate
(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: (See attached)

Tiering:
Was tiering applied? No. Need for uniformity in school districts in interest of safety.

ATTACHMENT

We are unable to estimate direct and indirect cost or savings to Kentucky school districts utilizing non-school bus vehicles and who will be effected by this regulation. Many Kentucy school districts are utilizing non-authorized unsafe non-school bus vehicles to transport school children.

Should school districts use good business practices when contracting with persons to transport school children in non-school bus vehicles, use board-owned vehicles meeting the proposed regulation, re-evaluate school bus routes inaccessible to conventional school buses, additional cost if any could be minimized.

It appears that Congress intended all school bus standards to apply to buses that carry students to or from events related to their schools as well as from home to school and return.

Federal Motor Vehicle Safety Standard No. 17 expressly includes trips to events related to school as among those which confer school bus status on a vehicle. It is also the intent of Standard No. 17 to protect school children, and children are no less deserving of protection when on their way to a school related event than when on their way from home to school.

Many Kentucky school districts are currently using motor vehicles designed to carry less than ten passengers (automobiles, trucks, carryalls). Since motor vehicles designed to carry less than ten passengers are not regulated by National Highway Traffic Safety Administration, are not certified by the original equipment manufacturer as affording the safety protection of a school bus, and in absence of State Department of Education Regulations with regard to construction and usage places unwarranted

liability on the Kentucky Department of Education and Kentucky school districts.

To insure the safety of Kentucky school children, it is imperative that regulations governing the design and use of non-school bus vehicles be adopted.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 7:080. Recruiting of student athletes prohibited.

RELATES TO: KRS 156.070
PURSUANT TO: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of interscholastic athletics in the common schools and authority to designate an organization to manage such. This regulation is needed to eliminate the practice of recruiting student athletes.

Section 1. Pupils enrolled in a private or public school (both domestic and foreign) at any grade level shall not be recruited to a public common school in the Commonwealth of Kentucky for the purpose of participating in athletics, including recruitment under the guise of academics.

Section 2. (1) Recruiting is defined as the act by a school employee or official, or anyone on behalf of or for the benefit of a school, of influencing a student, either directly or indirectly through verbal, nonverbal or written communications, during working hours or after (including the summer months), to transfer from a private or public school (both domestic and foreign) to a public common school in the Commonwealth of Kentucky for the purpose of participating in athletics. Such also includes so influencing a student to remain at a school when a bona fide change of residence is proper. A school official utilizing an intermediary, such as but not limited to a peer, another school employee, a student, a parent or a citizen, for the purpose of recruiting a student athlete shall be in noncompliance.

(2) An athletic coach also shall not influence a student even if the student, his parents or any intermediary from another school makes the initial contact. In this situation, a coach should immediately refer the person(s) to the school principal.

(3) Influencing a student shall include, but shall not be limited to the promise or instilling the expectation of an athletic advantage, playing time, employment of the student or his or her parents or relatives, housing for the student or his parents, or any other material or athletic reward.

Section 3. (1) Any common school or common school employee or official, including paraprofessionals and volunteers, knowingly allowing the recruitment of a student for the purposes of participating in athletics hereunder, or who, through reasonable diligence, should have known of such recruitment, shall be in noncompliance with state accreditation standards or guilty of willful neglect of duty or breach of contract. Such shall apply not only to coaches but also to personnel supervising coaches, such as but not limited to an athletic director, an assistant principal, a principal, an assistant superintendent, a superintendent or a school board member.

(2) This regulation shall also apply to students or their parents and can result in the student being declared ineligible for up to one (1) year and/or the athletic program of the offending school being suspended for an appropriate period of time, both to be decided and administered by the Kentucky High School Athletic Association (KHSAA) or the State Board of Education, as appropriate.

Section 4. The KHSAA is hereby designated to manage interscholastic athletics in the secondary schools, and said organization and any other organization or agency designated in the future to manage interscholastic athletics, shall adopt this regulation as a part of its by-laws and fully implement and enforce the applicable requirements hereof, relative to any and all its member schools, both public and private.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8:00 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9:00 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Bale
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect cost of implementing this proposed regulation.
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: There will not be additional reporting or paperwork required.
(2) Effects on the promulgating administrative body: This regulation will have no effect (financial/paperwork) 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: State and local revenues will not be affected.
(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: By-Law 10 of the "Kentucky High School Athletic Association's Constitution and By-Laws".
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering not applied since all school boards (schools) must comply with elementary and secondary interscholastic athletics.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 3:350. Repeal of 704 KAR 3:052 and 704 KAR 3:295.

RELATES TO: KRS 157.320, 157.360, 158.150
PURSUANT TO: KRS 156.070, 157.320
NECESSITY AND FUNCTION: KRS 157.320 authorizes the State Board of Education to adopt such rules and regulations as it deems necessary for the administration of the Foundation Program; KRS 157.360 requires the Superintendent of Public Instruction to allot classroom units for elementary and secondary schools (basic units) and administrative and special instructional services, the latter of which are interpreted by 704 KAR 3:010 to include units for principals and media consultants; and KRS 158.150 authorizes a superintendent, principal, or head teacher to suspend a pupil. The criteria for head teacher and media consultant units are now addressed in 704 KAR 3:030, so these regulations are no longer necessary.

Section 1. 704 KAR 3:052 and 704 KAR 3:295 are hereby repealed.

ALICE MCDONALD
Superintendent of Public Instruction
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8:00 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9:00 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Conley Manning
(1) Type and number of entities affected: 180 public school districts
(a) Direct and indirect costs or savings to those affected: Repeal of the regulations pertaining to Head Teacher and Media Consultant will not affect local district financial income.
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: Reporting and paperwork will be maintained at the present level.
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: 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: 704 KAR 3:030
(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: 704 KAR 3:052 Head Teacher is submitted for repeal due to the fact that local school districts do not employ head teachers. 704 KAR 3:295 Unit for Media Consultants is submitted for repeal because the content of this regulation is addressed in 704 KAR 3:030.

Tiering:
Was tiering applied? No. Tiering not applied since these regulations will not impact local boards of education.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 20:320. Beginning teacher internship program.

RELATES TO: KRS 161.130
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.030 requires that effective January 1, 1985, all new teachers and out-of-state teachers with less than five (5) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This regulation serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform statewide procedures and processes necessary to carry out the intent of the legislation.

Section 1. (1) Inasmuch as several states have adopted or are in the process of adopting plans similar to the teacher internship as provided in KRS 161.130, it is considered advisable that these states share in communication, materials, and research data relating to the internship. Accordingly, the Superintendent of Public Instruction may enter into formal and informal agreements with other states to promote a cooperative approach that will serve to enhance

the efforts that Kentucky might otherwise make alone.

(2) A Kentucky plan for the supervision, assistance, and assessment of teacher interns shall be developed and continuously improved, using whatever resources available, both in state and out of state. Whenever documents, instruments, video, or other materials have been developed in other states and then adopted or adapted for use in Kentucky appropriate references shall give credit for the source.

(3) The Kentucky plan shall be characterized as a professional judgment model in that the statutes provide for the three (3) member beginning teacher committee to make the judgment as to whether the performance of the teacher intern has been satisfactory or unsatisfactory.

Section 2. (1) In arriving at its judgment, the committee shall take into consideration the progress of the teacher intern throughout the entire school year and, particularly, the level of performance that has been achieved near the end of the school year. The beginning teacher committee shall determine the progress and improvement of the teacher intern pursuant to KRS 161.030, by a systematic observation of classroom performance, by a review of portfolio materials that are accumulated by the intern as requested by the committee, and by a review of the response of the teacher intern to the suggestions and recommendations made by the committee during its meetings with the intern throughout the period of internship.

(2) As a significant part of the process, the committee shall utilize the Performance Measurement System that has been developed by the state of Florida which emphasizes observation of teacher behaviors in a series of instructional domains that have been identified through extensive analysis of the research literature. The data derived from the Performance Measurement System shall be used to reinforce the appropriate behaviors of the intern teacher and to assist the intern teacher in recognizing behaviors that are ineffective or counterproductive for pupil learning. The data from the current Performance Measurement System shall be utilized as a focus for assistance from the resource teacher. The Florida Performance Measurement System is incorporated herein by reference and identified as including the following documents:

(a) Domains: Concepts and Indicators of Effective Teaching (n.d.);

(b) Domains: Knowledge Base of the Florida Performance Measurement System, 1983; and

(c) Manual for Coding Teacher Performance on the Summative Observation Instrument, 1984.

These documents shall be applied by the Division of Teacher Education and Certification, State Department of Education, Frankfort, Kentucky 40601.

Section 3. (1) The teacher internship as described in KRS 161.030 shall ordinarily take place during the first year of employment in a full-time teaching position in a school that is accredited by the Kentucky State Board of Education. The one (1) year internship shall include a minimum of 140 days of actual full-time teaching in the classroom assignment. Only blocks of time of one (1) semester to include a minimum of seventy (70) days of teaching in the classroom may apply toward the 140 day internship requirement, and consequently, the one (1) year certificate for the teaching internship shall not be valid for a contract of less than one (1) semester of seventy (70) days.

(2) If a teacher's first year of performance is judged by the committee to be unsatisfactory by reason of unsatisfactory performance, the teacher shall have the opportunity to repeat the internship during another year provided the teacher is employed by a school district within the next three (3) school years. If such employment is not obtained, the teacher must requalify by passing the National Teacher Examinations and obtaining a new statement of eligibility for certification.

(3) If the teacher's first year of performance is not of sufficient duration to satisfy the minimum requirement of 140 days of actual full-time teaching, the teacher shall have the opportunity to continue to completion the internship during another school year provided the teacher is employed by a school district within the next three (3) school years. If such employment is not obtained the teacher must requalify by passing the National Teacher Examinations and obtaining a new statement of eligibility for certification.

(4) As a condition for issuing the one (1) year certificate for teacher internship, the intern shall identify the specific teaching assignment including the school, the school district, and the school principal.

Section 4. (1) The school principal shall serve as chairperson of the beginning teacher committee and shall be responsible for identifying the committee members and coordinating their efforts by scheduling observations and committee meetings. The principal shall be responsible for collecting and filing such reports of the internship as are required by the Department of Education.

(2) Each principal of a school in which a teacher intern is employed and each member of the beginning teacher committee shall engage in the special training provided by the State Department of Education. The training for principals should be scheduled at different times during the summer session and also after the opening of the school term. The local school district may make the decision as to when their personnel should participate. The cost of the training as well as travel, meals, and overnight lodging shall be reimbursed by the State Department of Education. The training for the resource teachers shall ordinarily be scheduled before the opening of the school term; the remuneration for attendance shall be considered as a part of the contract with each resource teacher. The training for teacher educator members will be scheduled through the various teacher education institutions. Remuneration shall be made for travel, meals, and overnight lodging.

Section 5. The Department of Education shall contract with the local school district for the services of the resource teachers such to include a minimum of seventy (70) clock hours of direct services to each teacher intern and, in addition, for participation in committee supervision and assessment meetings and in the

training program for resource teachers. The contract shall also provide for the employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist in the classroom of the teacher intern.

ALICE MCDONALD, Superintendent
APPROVED BY AGENCY: March 5, 1985
FILED WITH LRC: March 15, 1985 at 8:00 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on April 23, 1985, at 9:00 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its March meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before April 18, 1985. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald, Attention: James Fouche
(1) Type and number of entities affected: All teachers initially certified after January 1, 1985, and having less than five (5) years previous teaching experience--approximately 1,200 in the public and private schools; all employers of these new teachers.
(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: Local districts must provide evaluation reports on the progress of the new teacher interns.
(2) Effects on the promulgating administrative body: This is a major new program to be developed and administered by the Department of Education.
(a) Direct and indirect costs or savings:
1. First year: Approximately two (2) million dollars
2. Continuing costs or savings: Approximately 1.8 million dollars per year.
3. Additional factors increasing or decreasing costs: Costs will vary depending upon the number of new teachers employed each year.
(b) Reporting and paperwork requirements: 1. All of the developmental work relating to initiating an internship program;
2. Communications with 4,000 persons who are to be trained to be evaluators in the internship process;
3. Communications relating to the progress of teacher interns;
4. Issuance of regular teaching certificates to persons who successfully complete the internship.
(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: Not applicable
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable
(6) Any additional information or comments: There may be a problem to providing the financial assistance relating to the teacher internship of persons employed in private schools.

Tiering:
Was tiering applied? No. Regulation ultimately applies to individual teacher candidates who must satisfy the same internship requirements for certification.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Consumer Health Protection

902 KAR 10:085. Kentucky onsite sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 and 211.990(2) direct the cabinet to regulate the construction, installation, or alteration of any onsite sewage disposal system, except for systems with a surface discharge. This regulation establishes uniform standards for onsite sewage disposal systems. The function of this regulation is to assure the construction, installation, or alteration of onsite sewage disposal systems in such a manner as to protect public health and the environment.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky Onsite Sewage Disposal Systems Regulation."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:
(1) "Alternative system" means any approved subsurface sewage disposal system other than a standard septic tank and lateral field system.
(2) "Approved" means that which has been considered acceptable to the cabinet.
(3) "Areas subject to frequent flooding" means those areas inundated at a one (1) year or less frequency, for a period of time exceeding seven (7) consecutive days.
(4) "Artificial drainage systems" means a man-made system of surface ditching or berming to divert surface water runoff; or curtain or vertical drains for interception and diversion of lateral groundwater flow; or underdrains for lowering the level of high watertables.
(5) "Blackwater" means liquid and solid human body waste and the carriage waters generated through toilet usage. It also includes wastes resulting from a garbage disposal.
(6) "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.
(7) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.
(8) "Clay" means a soil separate consisting of particles less than 0.002 mm in equivalent diameter.
(9) "Effluent" means the liquid discharge of a

septic tank or other sewage treatment unit.

(10) "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in collodial or dissolved states in combination with soaps, detergents, and/or food particles.

(11) "Grease trap" means an onsite sewage disposal system component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(12) "Greywater" means wastewater generated by water-using fixtures and appliances, excluding the toilet and the garbage disposal.

(13) "Landscape position" means the location of a site relative to the surrounding topographic relief of the land surface. Different landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge.

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to steepen and fall downward.

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes.

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation.

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile.

(f) Terrace: a naturally occurring elevated shelf of level to slightly sloping character adjacent to streams and drainageways.

(g) Plain: level to slightly sloping or undulating areas in wide valleys.

(h) Floodplain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods.

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets.

(j) Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater.

(k) Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(14) "Lateral field" means the area in which lateral lines are installed, or can be used to generally describe the soil absorption portion of the onsite sewage disposal system.

(15) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and further distribute the effluent for absorption into the soil beneath the ground surface.

(16) "Mottling" means spots or blotches of different color or shades of color interspersed with the dominant color of soil.

(17) "Onsite sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground.

(18) "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, or loess deposits, from which the soil is being formed.

(19) "Perched water table" means a saturated zone as identified by soil mottling, caused by a restrictive horizon and is generally above the natural water table.

(20) "Percolation test" means a physical test conducted according to prescribed methods on a parcel of land to determine relative suitability for an onsite sewage disposal system. Such test measures the ability of the soil to accept a volume of water over a measured time period, under falling hydraulic head conditions. Results are given as a consistent acceptance rate or equilibrium rate in inches per hour.

(21) "Permanent water table" means the zone of soil saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. Such zone is evidenced by soil colors of black (due to high organic content), grays, blues, or olive greens.

(22) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(23) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with this regulation, which is reserved for the installation of additional lateral fields and is not covered with permanent structures or impervious materials.

(24) "Restrictive horizon" means a soil horizon, which due to its cemented or compacted condition, is relatively impervious to the downward movement of water or treated effluent. Such horizons include: fragipans; hard pans; iron pans; or plow pans.

(25) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock or saprolite, not exhibiting soil properties, and exposed at the surface or overlain by soil.

(26) "Sand" means a soil separate consisting of particles between 2 mm and 0.05 mm in diameter.

(27) "Seasonal high water table" means the upper level of a zone of saturation caused by groundwater fluctuation in the soil.

(28) "Secretary" means the secretary for the Cabinet for Human Resources.

(29) "Septic tank system" means an onsite sewage disposal system consisting of a septic tank, or tanks, a gravity-fed lateral field, and other necessary appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.

(30) "Sewage" means the blackwater and/or greywater wastes generated in a residential, commercial, or public structure or facility.

(31) "Silt" means a soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

(32) "Site" means the area or parcel of land on which structures or other facilities generating sewage and the onsite sewage disposal system serving such structures or facilities are to be located.

(33) "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet or fractions thereof in a line from a fixed point to another point 100 feet distant. This rise or fall is normally expressed as a percentage of slope.

(34) "Soil" means the naturally occurring unconsolidated mineral and organic material of

the land surface. It consists of sand, silt and clay minerals, and variable amounts of organic materials.

(35) "Soil horizon" means a layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, pH, etc.

(36) "Soil map" means a map showing the distribution of soil types or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(37) "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the kinds, thickness, and the arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon.

(38) "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(39) "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(40) "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(41) "Soil texture" means the relative proportions of sand, silt, and clay in a soil, and may include particles greater than 2 mm in diameter, such as gravel, cobblestones, flagstones, chert, etc.

(42) "Subsoil" means, in general concept, that part of the soil below the A horizon.

(43) "System repair" means replacement or reconstruction of an onsite system or a portion of that system.

(44) "Textural class" means soils grouped on the basis of a specified range in texture.

(45) "Topsoil" means:

(a) The layer of soil moved in cultivation; and

(b) The A or Ap horizon, as described in published U.S. Conservation Service soil surveys.

(46) "Variance" means a waiver of certain specified requirements of this regulation granted by the cabinet after consideration of documented evidence that the granting of the waiver cannot reasonably be expected to result in the system contaminating groundwater supplies or creating a health hazard through surfacing of effluent, or otherwise creating a public health nuisance.

Section 3. Site Approval Standards and Procedures. (1) Site approval standards.

(a) All sites proposed for the installation of an onsite sewage disposal system shall meet the minimum standards listed below:

1. An official site evaluation conducted by a certified inspector on the site reveals an overall classification of provisionally suitable based on the requirements of Section 4 of this regulation, and, when required:

2. A percolation test conducted in accordance to the requirements of Section 6 of this regulation reveals an average equilibrium percolation rate of at least one-half (1/2) inch per hour.

(b) On sites where the onsite sewage disposal system area has been designated through staking off of the perimeter, regrading or placement of any structure on that designated area shall result in the voiding of the site approval and/or the permit, unless special written permission is granted by the local health department.

(c) On sites requiring the placement of fill soil before a system can be installed, the following requirements shall apply:

1. Original soil surface layer shall be plowed prior to placement of fill.

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.

3. Soil fill material shall be placed in the area to be filled in four (4) to six (6) inch layers, with each successive layer being mixed into the underlying layer by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.

4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.

5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons.

(2) Site approval procedures.

(a) All persons seeking approval of a site for the installation of an onsite sewage disposal system shall submit to the local health department an application for a site evaluation on forms provided by the cabinet, pay the required fee as established by the local board of health, and submit a basic site plan drawing showing the following information:

1. Specific address and/or location of the site.

2. Site boundary lines and dimensions of same.

3. Location of existing structures, wells, ponds, streams, easements, roads, drives, etc., if present.

4. Proposed (or existing) location of structure to be served by the system, and proposed system location.

(b) Person(s) seeking approval shall establish with the local health department an appointment time and date for the site evaluation, if they desire to be present during the evaluation for consultation.

(c) If the site evaluation reveals that the applicable requirements of this regulation are met, the area designated for system installation shall be staked off using suitable, readily observable markers. The person seeking approval shall receive a copy of the Site Evaluation Form including the overall evaluation rating, along with instruction relative to site limitations (where found) requiring site or system modifications. Instructions shall also be included to be presented to the Certified Percolation Tester selected by the person to conduct the percolation test (when required). Such instructions shall include the depth at which the test is to be conducted in the designated area, as well as any additional instructions deemed necessary by the Certified Inspector.

Section 4. Site Evaluation Standards. (1) A

certified inspector shall evaluate each proposed site. Based upon the factors contained in subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as SUITABLE (S), PROVISIONALLY SUITABLE (PS), or UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes under fifteen (15) percent shall be considered SUITABLE with respect to topography.

(b) Uniform slopes between fifteen (15) percent and thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain or vertical drains upslope from the lateral field system to remove all excess water that might be moving laterally through the soil during wet periods of the year. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except when a thorough study of the soil characteristics indicates that a lateral field system will function satisfactorily and sufficient ground area is available to properly install such a system. Slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE when:

1. The slope can be terraced or otherwise graded and the lateral field lines located in naturally occurring soil so as to maintain a minimum ten (10) foot horizontal distance from the trench and the top edge of the fill embankment; or

2. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

3. Surface water runoff is diverted around the lateral field system so that there will be no scouring or erosion of the soil over the field;

4. If necessary, groundwater flow is intercepted and diverted through curtain or vertical drains to prevent such water from running into or saturating the lateral field system; and

5. There is sufficient ground area available to install the onsite sewage disposal system with these modifications.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, side slopes, and level plains shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder slopes, side slopes, foot slopes, toe slopes, and natural terraces may be considered PROVISIONALLY SUITABLE when:

1. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water runoff is diverted around the lateral field system so that there will be no scouring or erosion of the soil over the field; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains to prevent such water from running into or saturating the lateral field system.

(d) If the provisions above listed in paragraph (c) of this subsection cannot be met the landscape position shall be classified UNSUITABLE.

(e) Areas closer than fifty (50) feet to the center of a depression or sinkhole, or areas subject to frequent flooding shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics (morphology). Soil borings shall be taken in the area to be used for soil absorption systems. At least four (4) such borings shall be taken to a depth of forty-two (42) inches or as required to determine the soil characteristics. Backhoe pits may be required when a more direct observation of soil horizons is deemed necessary for proper evaluation. Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to absorb effluent. The important soil characteristics which shall be evaluated by the certified inspector are as follows:

(a) Texture. The texture of the different horizons of soils may be classified into four (4) general groups.

1. SOIL GROUP I - Sandy texture soils contain more than seventy (70) percent sand-sized particles in the soil mass. These soils do not have enough clay to be cohesive. Sandy soils have favorable sewage application rates, but may have a low filtering capacity leading to malfunction due to contamination of groundwater. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

2. SOIL GROUP II - Coarse loamy texture soils contain more than thirty (30) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

3. SOIL GROUP III - Fine loamy texture soils contain less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

4. SOIL GROUP IV - Clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay. There are two (2) major types of clays: the 1:1 clays shall generally be considered PROVISIONALLY SUITABLE as to texture; and the 2:1 and mixed mineralogy clays, which shall be considered UNSUITABLE as to texture.

5. The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) C-136 and D-422 standard for sieve and hydrometer analyses, at the property owner's expense.

(b) Structure is usually not important in soil Groups I and II, and these types of soils shall generally be considered SUITABLE as to structure. The three (3) kinds of soil structure that are most significant in movement of sewage effluent through Groups III and IV soils are described as follows:

1. Block-like soil structure - Block-like soil structure in Group III and IV soils shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as slates or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure.

2. Platy soil structure - If Group III and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE.

3. Absence of soil structure - Soils in Groups II, III, or IV which are massive and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by the following procedures:

1. Comparison of moist soil samples collected from each soil horizon, to a minimum depth of forty-two (42) inches, to standard Munsell notation soil color charts to establish color hue, value and chroma; and

2. Observation of soil profile for evidence of low chroma (chroma 2 or less) soil horizons, and mottling characterized as to abundance, size and contrast; and

3. Observation of soil profile for evidence of free-standing groundwater.

(b) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of forty-two (42) inches or greater shall be considered SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE.

(c) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of less than forty-two (42) inches but greater than thirty (30) inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than thirty (30) inches may be classified as PROVISIONALLY SUITABLE, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE; and

3. Curtain drain, vertical drain, or underdrain systems are installed to intercept lateral groundwater movement, or to lower and maintain the free groundwater level to a depth of greater than thirty (30) inches.

(e) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than thirty (30) inches which cannot meet the criteria listed in paragraph (d)1 or 2 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(b) Soil depths less than forty-two (42) inches, but at least thirty (30) inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(c) Soil depths less than thirty (30) inches shall be classified UNSUITABLE as to depth.

(d) Where special system design and installation modifications can be made to provide at least eighteen (18) inches of naturally occurring soil below the bottom of the lateral field trench, such soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Presence of restrictive horizons such as fragipans, iron pans, clay pans, or plow pans, shall be determined by observation of the soil profile for brittle or dense horizons underlying shallow horizons displaying mottling and/or concretions of iron or manganese.

(b) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(c) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least thirty (30) inches, shall be considered PROVISIONALLY SUITABLE.

(d) Soils in which restrictive horizons are at depths less than thirty (30) inches may be classified PROVISIONALLY SUITABLE, provided that:

1. Special system design and installation modifications can be made to provide at least eighteen (18) inches of soil between the lateral field trench bottom and the restrictive horizon; or

2. The provisions of Section 5(3)(a)1 of this regulation are met.

(e) Soils in which restrictive horizons are at depths less than thirty (30) inches which cannot meet the above listed provisions in paragraph (d)1 or 2 of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites shall have sufficient usable land area to permit the installation and proper functioning of onsite sewage disposal systems, in addition to the land area to be occupied by existing or proposed structures, or other natural or man-made features of the site which are not compatible with system installation.

(b) Sites classified PROVISIONALLY SUITABLE shall have a minimum repair area equal to 100 percent of the land area occupied by the lateral field portion of the system set aside in addition to the space required in paragraph (a) of this subsection.

(9) Determination of overall site suitability. All of the criteria in subsection (2) through (8) of this section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall site classification. The lowest of the uncorrectable characteristics will determine the site classification.

(a) If the topography is classified as UNSUITABLE it may be reclassified PROVISIONALLY SUITABLE under the conditions outlined in subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE, and cannot be reclassified as PROVISIONALLY SUITABLE through modification the overall classification will be UNSUITABLE regardless of the other criteria unless the provisions of

Section 5(6) of this regulation are met.

(c) When soil depth is classified as UNSUITABLE, it may be reclassified as PROVISIONALLY SUITABLE under the conditions outlined in subsection (6)(d) of this section.

Section 5. Site Classification and System Restrictions. (1) Restrictions shall be placed upon the types of onsite sewage systems which will be approved for use due to site limitations and/or daily waste load volume. Such restrictions shall be determined by the following conditions, and the modified or alternative system(s) listed shall be considered as the minimum acceptable system(s).

(2) On sites with an overall evaluation rating of SUITABLE a conventional system consisting of a septic tank (or tanks), distribution box(es) and lateral field (twenty four (24) inches deep), shall be permitted.

(3) On sites with an overall rating of PROVISIONALLY SUITABLE (the provisionally suitable rating was originally granted or site modifications were made raising an unsuitable rating to that level) due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-eight (28) inches but less than forty-two (42) inches - A shallow (ten (10) - twenty-three (23) inch deep lateral trenches) conventional system, with a minimum of twelve (12) inches of fill soil above the trench barrier material.

2. Twenty-six (26) inches to less than twenty-eight (28) inches - A shallow (eight (8) - ten (10) inch deep lateral trenches) low pressure pipe (LPP) system, with a minimum of twelve (12) inches of fill soil above the trench barrier material.

3. Eighteen (18) inches to less than twenty-six (26) inches - A mound system; or, sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

4. Less than eighteen (18) inches - Filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after one (1) year settling period.

5. Where soils rating SUITABLE or PROVISIONALLY SUITABLE, as to texture, structure, and internal drainage are found beneath a restrictive horizon - a deep (trench bottom at least eight (8) inches below the bottom of the restrictive horizon) conventional system including curtain or vertical drains to intercept perched groundwater over the restricted horizon.

(b) Soil texture and/or structure.

1. Soil Group III - A conventional system.

2. Soil Group IV - A conventional system modified by the use of multiple septic tanks in series or an aerobic pretreatment unit, as outlined in Section 8(2) of this regulation, a permanent low volume flush water closet(s); and by the use of alternate lateral fields; by dosing tank and pump or siphon; by dosed alternate lateral fields; by dosed automatic alternating lateral fields; by the use of a low pressure pipe (LPP) system; by a lagoon and lateral field system; or by other alternative systems approved for such use by the cabinet. Modified conventional systems on sites with this soil group shall use equal flow distribution boxes only.

(4) On sites where available space is restricted due to site size or topography:

(a) A conventional system with lateral beds in lieu of trenches or a combination of trenches and beds; or installation of as much linear footage of lateral trench and/or bed as can be installed using hillside or drop distribution with overflow from the last box in series going into a holding tank (this method cannot be used on sites with soils in Soil Group IV).

(b) A low pressure pipe (LPP) system.

(c) Installation of permanent low-volume flush water closets or non-water carriage toilet devices to reduce wasteload. Such permanent water saving devices shall be required for use on sites with soils in Soil Group IV, however, no reduction of lateral field size is allowed.

(5) On sites where a PROVISIONALLY SUITABLE rating was initially obtained (or was obtained after site modifications), which may be affected by a combination of site limitations, the onsite system(s), whether conventional, modified, or alternative, which will overcome all limitations involved shall be installed.

(6) Sites originally classified as UNSUITABLE may be used for onsite sewage disposal systems, provided engineering, hydrogeologic, and soil studies indicate to the local health department that a suitable conventional system or a suitable modified or alternate system can reasonably be expected to function satisfactorily. Such sites may be reclassified as PROVISIONALLY SUITABLE upon submission to the local health department of the following:

(a) Adequate substantiating data to indicate that an onsite sewage disposal system can be installed so that the effluent will receive adequate treatment;

(b) Adequate substantiating data to indicate the effluent will not contaminate any drinking water supply, groundwater used for drinking water, or any surface water;

(c) Adequate substantiating data to indicate that the effluent will not be exposed on the ground surface where it could come in contact with people, animals, or vectors.

Section 6. Percolation Testing Standards. (1) All percolation tests shall be performed in accordance with the procedures outlined in this section. Such tests meeting all procedure standards shall be considered "approved."

(2) Excavation of test holes.

(a) Test holes shall be located on each site within the staked area designated by the certified inspector.

(b) A minimum of four (4) test holes shall be dug in this area to the depth of the proposed lateral field as specified by the site evaluation.

(c) Test holes shall be located in the designated area so as to provide uniform coverage of the area, with no more than a fifty (50) foot spacing between centers of adjacent test holes.

(d) Test holes shall be six (6) to eight (8) inches in diameter.

(e) After excavation, all holes shall be scarified in the lower twelve (12) inches of the hole to break up smearing and restore absorption surfaces.

(f) All loose soil material shall be removed from test holes to reduce puddling and sealing

of soil pores by fine soil materials.

(g) A portion of the excavated materials from the test holes shall be mounded around each hole to prevent surface water runoff from entering the hole in the event of rainfall during the period preceding and continuing through the conduct of the test.

(3) Presoaking of test holes.

(a) In soils which do not exhibit surface or subsurface cracking in dry weather (low shrink-swell potential), the test holes shall be presoaked by filling with water for at least fourteen (14) hours prior to the test.

(b) In soils which exhibit surface or subsurface cracking during dry weather due to moderate to high shrink-swell potential (Soil Group IV), the soil surrounding the test holes shall be saturated at least three (3) days by maintaining at least twelve (12) inches of water in each hole during that period. After completion of the swelling procedure stated above, test holes shall be left for a period of fourteen (14) hours before proceeding with measurement procedures. In lieu of the above procedure, testing for such soils may be conducted using the presoak procedure outlined in paragraph (a) of this subsection, when such tests are conducted during the months of December through April.

(4) Conduct of test measurements.

(a) All measurements shall be made from fixed reference points establishing the bottom of the test hole and a point exactly six (6) inches above the bottom. Measurement shall be made using calibrated measuring sticks, calibrated instruments or devices using floats, or other such equipment acceptable to the cabinet.

(b) In test holes containing more than six (6) inches of water remaining after the presoaking/swelling period (assuming significant rainfall has not occurred between the completion of presoak/swelling procedures and the start of test measurement), the water depth shall be recorded and considered as prima facie evidence of an unsatisfactory percolation rate.

(c) In test holes containing six (6) inches or less of water remaining after the presoaking/swelling period, the water shall be adjusted to a six (6) inch depth and testing period.

(d) Water added to test holes for testing purposes shall be free of sediment and foreign material, and shall be added in such a manner that slaking and scouring of test hole surfaces is minimized.

(e) Testing on each hole shall begin by adjusting the water depth as in paragraph (c) of this subsection, followed by measurement of the amount of decrease in water depth at the end of a one (1) hour period from the six (6) inch reference point. Measurements shall be recorded on forms supplied by the cabinet for this purpose. Such measurements shall be recorded to the nearest one-eighth (1/8) inch.

(f) After first hour measurements, all test holes shall be readjusted to the six (6) inch water depth and remeasured and recorded at the end of another one (1) hour period. This process shall be repeated for a total four (4) hour period. The hourly periods for each test hole shall begin at the time the water depth is readjusted to six (6) inches. Actual time at which the test was initiated on each hole shall be recorded.

(g) The fourth hour readings of all test holes shall be averaged and the result recorded on the report form as the equilibrium rate, or consistent rate of acceptance.

(h) For percolation testing in Group I soils the time period between readings shall be reduced to ten (10) minute intervals for at least four (4) successive readings. The percolation rate in inches per hour for all holes shall be calculated from the results thus obtained, and the last reading averaged to obtain the equilibrium rate.

(i) In the event the rate of acceptance in any of the test holes is not consistent, the affected test hole or holes shall continue to be tested until a consistent rate is obtained. The rate(s) thus obtained for the affected hole(s) shall be used in calculating the equilibrium rate. A consistent rate shall be considered to have been obtained when the acceptance rate for an affected test hole remains the same, or decreases no more than one-half (1/2) inch, on two (2) consecutive hourly measurements.

(j) When test holes fail to meet the minimum acceptance rate of one-half (1/2) inch per hour, the area represented by the hole or holes involved shall be removed from consideration for placement of the lateral field system. In the event that the area represented by the failing hole or holes reduces the usable (passing) area to the extent an approved system cannot be installed, or a failing equilibrium rate for all holes is obtained, the site shall be considered unacceptable for a subsurface sewage disposal system, if percolation test findings confirm similar site evaluation findings.

Section 7. Certification to Conduct Percolation Tests. (1) No person shall offer service to conduct percolation tests until they have met the requirements of this section and have been issued certification.

(2) All persons who propose to offer such service shall submit their name, occupation, professional registration number, and address to the cabinet.

(3) Persons eligible for certification shall include:

(a) Engineers;

(b) Land surveyors;

(c) Architects;

(d) Soil scientists; and

(e) Registered sanitarians.

(4) To be eligible for recertification the persons listed in subsection (3) of this section shall possess a valid professional registration, license, certificate or other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky. Failure to maintain professional registration shall result in the suspension of certification to conduct percolation tests until such registration is reestablished.

(5) Persons meeting eligibility requirements shall be issued a certification number, which shall be placed on all percolation test report forms, and any additional documents related thereto.

(6) Persons seeking certification may be required to demonstrate their ability to conduct percolation tests in accordance with the standards in Section 6 of this regulation prior

to receiving such certification.

(7) All certified persons shall be subject to unannounced monitoring by the cabinet, while conducting percolation tests, to determine if standards are being met.

(8) When the cabinet finds that improper testing or test reporting practices exist, the certified person involved shall be subject to suspension or permanent revocation of such certification.

(9) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(10) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

Section 8. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility, based upon the design flow per designated flow unit listed in Table 1 below, times the number of such flow units involved.

(a) When approved permanent low-volume flush water closets using one (1) gallon or less of water per flush cycle are installed exclusively in any residence, commercial facility or other public facility, the daily design waste flow unit for that specific residence or facility may be reduced to the figure given in Column B in Table 1.

(b) When approved permanent non-water carriage water closet type devices (composting toilets, incinerator toilets, oil carriage toilets, etc.) are installed exclusively in any residence and no other blackwater type wastes are created, the daily design waste flow unit for that specific residence may be reduced to the figure given in Column C in Table 1.

(c) No daily waste flow unit reduction shall be granted for installation of non-permanent flow reduction devices such as: showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other such devices. On sites with soils in Soil Group IV, use of water saving devices including low-volume flush water closets, may be required, however, no reductions in system sizing shall be granted.

(d) All onsite sewage systems which receive a design daily waste flow of 2,000 gallons or more (or require 1,000 lineal feet of lateral field) shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of a low pressure pipe (LPP) system.

(e) The following businesses or facilities shall not be approved for disposal of waste waters into an onsite sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats (except on an experimental basis as provided under Section 8(12) of this regulation);
2. Car washes;
3. Slaughterhouses (kill room wastes only);
4. Funeral parlors or mortuaries (embalming wastes only); and
5. Factories (industrial or process wastes only).

Table 1
Design Daily Waste Flow

Source of Sewage	Units	Gallons/Unit/Day Standard	Column B	Column C
Dwelling Units:				
Single Family Residences	Each bedroom	120	96	90
Hotels or Motels	Each room	120	96	
Apartments/ Condominiums	Each bedroom	180	144	
Rooming Houses	Each bedroom	120	96	
Mobile Home Parks	Space	350	No reductions	
Commercial/Industrial:				
Retail stores	Each toilet room	200	120	
Malls, Shopping Centers	Each 1,000 sq. ft.	200	120	
Offices	Employee	20	12	
Medical offices (with labs)	Employee	50 250 additional	40	
Dental offices (with water rinse units)	Exam chair	250	200	
Dental offices (with suction units)	Exam chair	50	40	
Industrial buildings	Employee/ shift (does not include process water or cafeteria)	20	12	
(Add for showers)	Employee/ shift	10	No reductions	
Construction site	Employee/ shift	20	12	
Visitor center	Visitor	5	3	
Barber shops	Chair	75	60	

Beauty shops	Chair	125	100
Eating and Drinking Establishments:			
Restaurant (does not include bar or lounge)	Meal/seat	15	12
Bar or Lounge	Seat	20	16
Drive-in (no public restrooms)	Estab.	500	No reductions
Drive-in (with public restrooms)	Car stall	20	16
Food Markets:			
Prepackaged	Store	500	No reductions
Food Processing	Store	1,000	900
(with eat-in delicatessen)	Meal/Seat	15 Add.	12 Add.
(with carry-out delicatessen)	Store	250 Add.	250 Add.
Institutional (Includes Food Service):			
Hospitals and surgical centers	Each bed	300	240
Mental	Each bed	100	80
Prison or Jail	Each inmate bed	100	80
Nursing Home, Rest Home	Each resident bed	100	80
Schools and Churches (Does not include Food Service):			
Elementary, Day Care, Kindergarten	Student	25	20
High School	Student	35	28
College	Student	35	28
Boarding School	Student	60	48
Churches	Average attendance/person	3	2
Recreational:			
Recreational Vehicle Park w/hookups	Space	150	No reductions
With Central Bath no/ hookups	Space	75	60
Day Camp (No meals)	Person	15	12
Residential Camp (does not include cafeteria)	Person	60	48
Resorts/ Housekeeping Cabin	Bedroom	120	96
Tent Camping Areas w/ central bath	Space	75	60
Country Clubs No Meals	Member	15	12
Meals and showers	Member	50	40
Swimming Pools	Design Capacity/Person	10	8
Picnic Parks, Ball Parks (w/toilet only)	Average Attendance/Person	10	8
Movie Theaters	Seat	5	3
Drive-In Theaters (does not include food service)	Space	15	12
Skating Rink/ Dance Hall	Person (based on rated capacity)	10	8
Bowling Alley	Lane	100	80
Transportation:			
Airport, Bus or Rail Depot	Passenger	5	3
Auto Service Station	Each Water Closet or Urinal	250	150

(2) Residential Pretreatment Units. All septic tanks used in single-family residence onsite sewage disposal systems shall meet the minimum working liquid capacities listed below, based on the number of bedrooms involved. Aerobic units or other types of approved pretreatment units shall be sized according to their rated treatment capacities in gallons per day, based upon the design daily waste flow per design unit given in Table 1. On sites with soils of Soil Group IV, additional pretreatment shall be provided by use of one (1) of the following methods:

(a) Installation of multiple septic tanks in series. The first tank, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2, or of at least 1,000 gallons capacity. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

(b) Installation of an aerobic pretreatment unit. For those aerobic units which do not include an integral trash or primary settling chamber in their construction, such shall be provided by the series installation of a minimum 500 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit. Where required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial installation of multiple tanks is permitted to obtain the necessary capacity. In such instances the first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2
Minimum Capacity of Pretreatment Units

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
2 or less	750	1,000
3	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for all septic tanks for commercial and public facility onsite sewage disposal systems shall be determined by multiplying the daily design waste flow per unit times the total number of such units, plus an additional fifty (50) percent of that figure for solids storage. (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Procedures and requirements listed in subsection (2) of this section relative to: sites with soils in Soil Group IV; aerobic and other types of pretreatment units; and use of multiple tanks in series to obtain required capacity; shall also apply to commercial facility system installation.

(c) All commercial or public facilities engaged in the manufacture, processing, preparation, and service of food and food products shall be provided with an approved grease trap. All wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping, and discharge into a grease trap prior to entrance into an onsite sewage disposal system. Minimum liquid capacity of grease traps shall be based upon the total design daily waste flow for the facility served. Grease trap capacity shall be a minimum of 150 gallons for daily waste flows of 4,000 gallons or less; 300 gallons for daily waste flows of 4,001 to 8,000 gallons; and 500 gallons for daily waste flows greater than 8,000 gallons. All grease traps shall be placed outside of the structure served unless special approval is granted by the cabinet. In all instances the grease trap shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. All gravity distribution lateral fields for onsite sewage disposal systems shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 3 for the specific site soil characteristics, shall determine the minimum square footage of lateral trench bottom area required. This is converted into the total length of two (2) foot wide trench needed as shown in Table 4.

Table 3
Application Rates for Gravity Distribution Lateral Fields

Soil Group	Soil Texture Classes	Approx. Range Percolation Rate Inch/Hr.	Application Rate Gal/ Sq.Ft./Day
I Sands	Sand	6 - 12	1.2
	Loamy Sand	4 - 5 7/8	.9
II Coarse Loams	Sandy Loam Loam	3 - 3 7/8	.7
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	2 - 2 7/8	.5
Fine Loams (with provisionally suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	1 - 1 7/8	.37
IV Clays (Kaolinitic or 1:1 with Provisionally Suitable Structure)	Sandy Clay Silty Clay Clay	1/2 - 7/8	.27

Table 4
Lateral Trench Length Requirements for Gravity Distribution Systems Based on Two Foot Trench Width

Application Rate Gallon/Square Foot/Day	Linear Feet per 100 gallons
0.27	185
0.37	135
0.5	100
0.7	71.5
0.9	55.5
1.2	41.3

(5) Sizing of low pressure piping distribution lateral fields. All low pressure piping (LPP) distribution lateral fields for onsite sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 5, for the specific site soil characteristics, shall determine the minimum square footage of absorption area required. Further system design requirements shall be determined based upon the criteria and specifications given in the North Carolina State

University Publication UNC-SG-82-03, "Design and Installation of Low-Pressure Pipe Waste Treatment Systems."

Table 5
Application Rates for
Low Pressure Pipe (LPP) Lateral Fields

Soil Group	Soil Texture Classes	Percolation Rate Inch/Hr.	Rate Gal/ Sq.Ft./Day
I Sands	Sand Loamy Sand	6 - 12 4 - 5 7/8	0.5
II Coarse Loams	Sandy Loam Loam	3 - 3 7/8	0.4
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	2 - 2 7/8	0.3
Fine Loams (with provisionally suitable structure	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	1 - 1 7/8	0.2
IV Clays (Kaolinitic or 1:1 with provisionally suitable structure	Sandy Clay Silty Clay Clay	1/2 - 7/8	0.1

(6) Sizing of gravity distribution lateral beds. When lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench needed shall be calculated from Tables 1, 3, and 4 information. That figure shall be multiplied by the percentage shown on Table 6, for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Table 6
Lateral Bed Length Requirements
for Gravity Distribution Systems
Based on Bed Width

Bed With	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12'	26%

(7) Sizing of gravity distribution alternate lateral fields or beds. When alternate gravity distribution lateral fields or beds are used or required, the individual alternate lateral fields or beds shall each contain two-thirds (2/3) of the total linear footage required for the system. Such alternate lateral fields or beds shall be alternated in use on a yearly basis through the use of an approved alternating valve or device.

(8) Sizing of dosed gravity distribution automatic alternating lateral fields or beds. When dosed automatic alternating lateral fields or beds are used or required, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, through the use of two (2) or more dosing siphons or pumps controlled by an automatic alternating device, or by dosing simultaneously.

(9) Sizing of combination evapo-transpiration/absorption lagoon and lateral field systems. On sites where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evapo-transpiration/absorption lagoon and shallow lateral field system may be considered for installation. Total daily waste flow shall be determined by using Table 1, and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon. Effluent entering the lagoon shall have passed through a properly sized pretreatment unit, and overflow shall be directed to a shallow (twelve (12) inches to eighteen (18) inches depth) lateral field. Such lateral field size shall be calculated by multiplying the total daily waste flow in gallons by .28 linear feet per gallon.

(10) Sizing of mound systems. Mound systems used to overcome site conditions of shallow depth to rock or water tables, or slowly permeable soils shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, Onsite Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems.

(11) Sizing of residential laundry waste systems. When, in the cabinet's opinion, improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems, such separation shall be accomplished in the following manner:

(a) Greywater sewer for the washing machine shall be separated from the main house sewer;

(b) Laundry greywater shall discharge into a shallow (eighteen (18) inch depth) lateral bed of a minimum of four (4) feet in width, and twenty-five (25) feet in length for a two (2) bedroom residence and an additionally twelve and one-half (12 1/2) feet in length for each additional bedroom.

(c) Where available space is limited, other bed and/or trench configurations may be used which provide equivalent square footage of soil absorption area.

(d) On new system installations where laundry waste-flow separation is permitted a fifteen (15) percent reduction in the primary system lateral field requirements shall be allowed only

for sites with soils in Soil Groups I-III. On sites with soils in Soil Group IV such separation may be required but no system site reduction will be granted.

(12) Sizing of other onsite sewage disposal systems. Other alternative systems not specifically mentioned in this regulation, or experimental systems, shall be sized according to applicable standards on a case-by-case basis by the cabinet. Such sizing shall be based upon site characteristics, effluent characteristics, pretreatment processes, technology involved, and other demonstrable factors.

(13) Sizing of dosing tanks or chambers. Dosing tanks or chambers shall be of sufficient capacity to hold two (2) times the total design daily waste flow calculated from Table 1 for residential structures, and three (3) times the single dose volume for commercial and public facilities.

(14) Sizing of holding tanks. Holding tanks shall be of sufficient capacity to contain the total design daily waste flow calculated from Table 1 for the following time periods:

(a) Single family residences - holding tanks are not recommended for single family residences due to the expense involved in routine pumping. Only those residences used on a limited or seasonal basis for vacation or weekend occupancy, or when a municipal sewer system is to be available within a maximum two (2) year period, shall be considered for holding tanks. For such uses a ten (10) day storage capacity shall be provided.

(b) Commercial, public facilities - seven (7) days.

Section 9. System Installation Standards. (1) System layout standards.

(a) All systems shall be designed, laid out, and installed in the staked area set aside for such purpose during the site evaluation. Installation of the system in any other area is prohibited without the written consent of the local health department certified inspector.

(b) Layout of the system on the site by the installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 100 feet. Maximum length for individual lateral trenches in low pressure pipe (LPP) systems shall be sixty (60) feet.

(d) Lateral trenches for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers. Lateral trenches for low pressure pipe (LPP) systems shall be spaced a minimum of five (5) feet on centers. Lateral beds for gravity distribution systems shall be spaced a minimum of eight (8) feet from sidewall to sidewall. Lateral trench spacing shall be increased two (2) feet on centers on all sites with slopes greater than fifteen (15) percent and less than twenty (20) percent. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet on centers for lateral trenches.

(e) Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed is required;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines are required, spaced two and one-half (2 1/2) feet from the sidewalls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the sidewalls shall be used, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the sidewall laterals.

(2) Excavation standards.

(a) Only that heavy equipment necessary to the installation of an onsite sewage disposal system shall be permitted in the staked area set aside for that system. Such equipment shall be operated so as to minimize travel over, and compaction of, the system area.

(b) Excavation of the lateral field, bed or other soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes listed in Soil Group IV. Such restriction shall apply for all system installations taking place during the months of November through May, or anytime immediately after heavy rainfall occurs. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all non-perforated piping used to conduct effluent to other components through gravity flow means, shall be done only after shooting of grades to assure a minimum of one-eighth (1/8) inch per foot fall from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d) Excavations for placement of all components except lateral trenches or beds shall be made to the necessary depth for installation and shall be dug level in undisturbed earth. If filling is required to level or raise components to the proper grade, tamped gravel or sand shall be used for such bedding purposes. When installation occurs in stony areas, large stones, flags, boulders, etc., shall be removed from component placement excavations to prevent component damage, and the cavities created by their removal shall be filled with tamped gravel or sand, if they are located on the bottom surface of the excavation.

(e) Excavations for lateral trenches or beds shall be made to the depth specified by the certified inspector based on site evaluation results. Trench or bed depth from grade for a

conventional onsite sewage disposal system shall be considered as being twenty-four (24) inches. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems using four (4) inch diameter lateral lines shall be ten (10) inches from grade. Minimum trench depth for low pressure pipe (LPP) systems shall be eight (8) inches from grade. Trench width for low pressure pipe systems shall be a minimum of eight (8) inches to a maximum of eighteen (18) inches.

(f) Lateral trench and bed bottom grades shall be as shown in Table 7 below:

Table 7
Maximum Grades for Trench and Bed Bottoms

Distribution Method	Type	Maximum Grade inches/100 feet
Hillside or drop box (also serial distribution)	Trench	Level to 2"
Equal Flow Box	Trench	2" to 4"
	Bed	Level to 1" in all directions from center
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level

(g) Excavations for curtain drains, vertical drains or under drains to intercept and/or lower groundwater tables shall be made to the depth determined by the certified inspector and graded (where necessary) to drain to the surface or to a pumped catchment basin.

(h) Excavations for distribution leaders (non-perforated pipe) from the distribution box(es) on gravity distribution systems, shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevation(s) of the trench or bed bottoms. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i) Excavation of evapo-transpiration/ absorption lagoons shall be done using a bulldozer or similar track type equipment to reduce compaction of the lagoon bottom. Lagoon bottoms shall be uniformly level and shall be constructed to provide a maximum wastewater depth below the overflow outlet of three (3) to five (5) feet, and a freeboard of two (2) or three (3) feet. Containment berming, dikes, or dams may be of excavated materials, if sufficient clay content exists in the soil to prevent seepage between the berm and the original soil surface after compaction. Berms, dikes or dams shall be constructed on a three (3) to one (1) slope.

(3) Component installation standards.

(a) Septic tanks and other pretreatment units, dosing tanks and holding tanks shall be installed level and all connections to the unit which conduct sewage or effluent, and all unit joints or seams, are to be rendered watertight. Manufacturer's instructions on installation, and all connections to the unit (piping and/or electrical), shall be followed by the installer. Units showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged unit. Patching of minor damage which does not affect the structural integrity or watertightness of the unit may be permitted under the supervision of the certified inspector.

(b) It shall be the installer's responsibility to provide access at finished grade to the outlet end manhole on all septic tanks. Such access shall be provided through the use of suitable manhole risers of sufficient internal dimensions to allow removal of the tank manhole lid. Such manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal. Lids or covers of sheet metal, plastic or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal. Where the septic tank manufacturer has provided a knockout on the top of the tank for installation of a six (6) inch diameter capped riser pipe, such riser pipe may be installed in lieu of the manhole riser.

(c) Distribution boxes, and alternating valves or devices, shall be installed level, and all piping connections shall be rendered watertight. Such components showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged component.

(d) Equal flow distribution boxes shall be installed on a stable base to prevent settling. Tamped sand or gravel shall be sufficient for concrete boxes, but plastic or fiberglass boxes shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box sidewalls at least four (4) inches. Rough leveling of the box may be done using a carpenter's level, however, final leveling shall be done by the "water leveling method" described below:

1. Outlet leader piping shall be extended past the inside sidewall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of plastic caps or plugs by solvent welding or cementing. Once attached, the water level is raised to the desired point on the caps or plugs, the level is marked on all caps or plugs, and a knife is used to cut out the upper portion of the cap or plug to the level marked.

2. Additional water is carefully added while closely observing the water as it enters the outlets. If the outlets are properly leveled, all outlet lines will begin to receive water at the same level and time. If one or more lines are receiving water while others remain dry, adjustments to those higher outlets are necessary. Fine adjustment is then made by shaving down the cutouts on the caps or plugs until leveling is achieved. Other methods may be considered acceptable by the cabinet provided that they can be demonstrated to be of equal or superior performance to the above method.

(e) Approved non-perforated plastic pipe shall be used as leader piping to connect outlets in the distribution box(es) to the perforated

lateral lines in gravity distribution systems, and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

(f) All leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

(g) Lateral lines for gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds), and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4. A two (2) to four (4) inch layer of approved barrier material (straw, hay, grass clippings), or a single layer of synthetic filter fabric, is then placed over the trench fill material to prevent entry of backfill soil fines.

(h) Lateral lines for low pressure pipe (LPP) systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earth fill at least one (1) foot thick shall be placed from sidewall to sidewall of the trench to the level to which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping is laid in place and assembled (may be preassembled), and leveled;

4. Trench earth barrier walls are completed to ground surface and additional pea gravel trench fill material is carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. A one (1) to two (2) inch layer of approved barrier material (straw, hay, or grass clippings), or a single layer of synthetic filter fabric is then placed over the pea gravel to prevent entry of backfill soil fines.

(i) Installation of effluent piping to an evapo-transpiration/absorption lagoon and overflow piping to the lateral field system shall be as follows:

1. Non-perforated gravity flow piping is laid in an excavated trench into the center of the lagoon and attached to a poured concrete, three (3) foot square, four (4) inch thick apron.

2. Overflow piping consists of a supported, inverted elbow connected to a non-perforated gravity flow plastic pipe which conducts overflow to the distribution box(es) of the lateral field. The overflow should be located at a point within the lagoon that is the furthest distance from the inlet apron.

3. All submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars.

(4) Curtain drain, vertical drain, underdrain installation standards.

(a) Curtain drains and underdrains shall be installed according to the following procedures:

1. After excavation of drain trenches to the required depth (by backhoe or trencher) the perforated plastic drainage pipe may be laid in the trench. Depending on trench width and depth it may be necessary to bed the pipe in small gravel or pea gravel to provide lateral and vertical support to pipe sidewalls to prevent collapse of the pipe.

2. After bedding and grading the pipe to drain, regular trench rock fill material (for trenches twelve (12) inches or wider) or pea gravel (for trenches narrower than twelve (12) inches) shall be added to the trench to a point four (4) inches above distinct soil mottles and/or grey, blue, olive or similar soil colors indicating the highest point of water table elevation, or six (6) inches from grade above a fragipan, iron pan or clay pan to prevent their reforming.

3. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used when more permeable soil horizons exist below a restrictive horizon (fragipans, iron pans, clay pan), and shall be installed according to the following procedures:

1. After excavation of the drain trenches to the required depth the trenches are filled with crushed rock or pea gravel as in curtain drains above, to the points listed in paragraph (a)2 of this subsection, as applicable. Drainage piping is unnecessary in vertical drains since drainage is encouraged downward through the restrictive horizon to more permeable soils.

2. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(5) Backfilling and finish grading standards.

(a) Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, dosing chambers, distribution boxes, low pressure pipe manifolds, alternating valves and devices and non-perforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers. While the filling and tamping process is being carried out, care shall be taken to prevent shifting, tilting, misalignment or damage of system components or damage to watertight joints, seams or connections. The location of all such components shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(b) When manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed.

(c) Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and shall be left mounded four (4) to six (6) inches above grade to allow

for settling.

(d) Finish grading over the onsite sewage system shall be performed in such a manner as to minimize compaction through the use of lightweight equipment. Such grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field. Final grading over staked or flagged system components shall be accomplished manually, or with lightweight equipment using extreme care to prevent damage to or misalignment of components.

(e) Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(f) Finish grading on other areas of the site shall be done in such a manner as to divert surface water runoff from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. When site conditions are such that normal grading procedures cannot divert all such runoff, diversion ditches, swales, berms, or other such diversion drainage means shall be constructed to divert runoff away from the system.

Section 10. System Setback Restrictions. (1) Minimum setback distances shall be required for installation of onsite sewage disposal systems from structures, water supplies, roads, streams, bodies of water, etc., as listed in Table 8 below:

Table 8
Minimum Setback Distances
for Onsite Disposal Sewage Systems

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit (or Holding Tank)	Minimum Distance (Ft.) from Sidewall of Lateral Trench or Bed
Property lines	5	5
Building foundations	10	10
Basements	10	20
Basements (Downslope from system)		30 (5–15% Slope) 40 (15–25% Slope) 50 (25% and Higher)
Wells	50	70
Cisterns	50	70
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25
Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Road cutbanks (Downslope)	10	25
Underdrain system	10	10
Curtain or vertical drain	10	10 (Upslope and Sides) 25 (Downslope)
Sinkholes (Center of depression)	50	50
Buried Water Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Livestock pens, feed lots, corrals, etc.	10	10

Section 11. System Installation Inspection. (1) All onsite sewage disposal systems installed, constructed, altered or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) The initial installation inspection shall be requested by the installer upon completion of excavation work and the setting of the pretreatment unit. Inspection shall consist of shooting of grades in all excavations to determine compliance with this regulation, and inspection of the pretreatment unit for compliance as to approved type, proper capacity.

(b) In lieu of the initial inspection the certified inspector may grant approval for continuance of installation work up to the point prior to backfilling provided that the installer assumes responsibility of shooting all grades and recording his readings on a form provided by the cabinet, certifying by his signature that excavation work has been performed in compliance with the regulation.

(c) The final installation inspection shall be conducted by the certified inspector prior to backfilling of the system. The installer shall be responsible for requesting this inspection at the discretion of the certified inspector.

(d) The final installation inspection shall consist of examination of the following: system components, as to type, size or capacity, approved status, materials, connections; installation as to proper placement, proper grade or level; conduct "water leveling" method on equal flow distribution boxes; installation of lateral lines, trench fill material depth, trench barrier material placement; and other necessary examinations and checks to determine compliance with this regulation.

(e) Systems meeting approval shall be backfilled in accordance with this regulation, and it shall be the installer's responsibility to assure proper backfilling. Once backfilling is completed, it shall be the owner's responsibility to protect the system from damage, disruption, or unnecessary surface water drainage during final grading and subsequent occupancy and system usage.

(f) Systems not meeting approval shall be reconstructed as needed to meet compliance.

Section 12. Responsibilities. (1) The construction, operation, and maintenance of onsite sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors, engaged in the evaluation and determination of measures required to effect compliance with the provisions of this regulation shall in no way be taken as a

guarantee that onsite sewage disposal systems approved and permitted will function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct which are caused, or which may be caused, by a malfunction of such systems.

Section 13. Variances. (1) Any person owning a site where an onsite sewage system is proposed to be installed may request, in writing, to the local board of health, or their designated agents, consideration for the granting of a variance to specific portions of this regulation.

(2) Written requests shall include all pertinent information about the site, the specific portion(s) of the regulation requested to be waivered, the specific reasons for the request, and documented evidence justifying the granting of the variance.

(3) Such requests shall be acted upon as soon as practicable by the local board of health, or their designated agents, and a written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the person so applying within five (5) working days of the decision.

(4) Persons requesting variances shall have the right to appear in person with counsel and/or expert professional witnesses before the local board of health, or their designated agents, either to present the request, or to appeal a variance decision.

(5) If such a hearing is requested, the local board of health, or their designated agents, shall set a date and time for the hearing, as soon as practicable, and shall so notify in writing the person requesting same of such date and time. Notification shall be made within five (5) working days of receipt of the request and at least two (2) days prior to the date of the hearing.

(6) Decisions on the granting or denial of variances shall be based upon the evidence presented by the requestee; the evidence presented by the certified inspector(s) involved with the site in question; as well as supportive evidence for either side presented by expert professional witnesses.

(7) Decisions shall be influenced by the requirements of the Onsite Sewage Systems Law and these regulations, and by the presence or absence of reasonable assurances, derived from evidence presented, that the granting of such variance will not result in the creation of groundwater contamination or the surfacing of effluent, and creation of a health hazard or public health nuisance.

(8) Variances shall not be granted for the following purposes:

(a) Use of unapproved system components;

(b) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;

(c) Placement of lateral field within twelve (12) inches of, or below the upper limits of a watertable;

(d) Placement of lateral field within twelve (12) inches of, or into bedrock;

(e) Waiver of site evaluations or system inspections;

(f) Reduction of required system size when modified or alternative systems can be used to provide an equivalent system in the available area on the site;

(g) In any instance where site and/or system modifications or alternative systems can overcome site limitations.

(9) Variances granted which may have a direct effect upon the future use or marketability of a site or subdivided parcels of that site, shall be made a permanent record, and filed at the local health department in the county where the site is located.

Section 14. Exemption. The provisions of this regulation shall not apply to onsite sewage disposal systems in use or for which a valid permit has been issued prior to the effective date of this regulation, unless such system requires future repair or alteration due to malfunction, damage, or increase in waste loading due to a change in usage of the structure(s) served by the system. If such occurs, this regulation shall be enforced only as regards the specific repair or alteration work required.

Section 15. Effect on Local Regulations. This regulation shall not supersede more stringent regulations of any local governmental body.

Section 16. Repeal of Existing Regulations. The provisions of 902 KAR 10:090, Standards for subsurface sewage disposal systems; and 902 KAR 10:100, Standards for subsurface sewage disposal systems other than residential, are hereby repealed.

Section 17. Effective Date. This regulation shall become effective on October 1, 1985.

C. HERNANDEZ, M.D., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: March 14, 1985
FILED WITH LRC: March 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for April 22, 1985 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 April 17, 1985 of their desire to appear and testify at the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Irving Bell

(1) Type and number of entities affected:

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

1. First year: Potential slight increase in cost to individual consumers due to more stringent requirements for onsite sewage disposal system design and installation.

2. Continuing costs or savings: Increase in costs mentioned above would be mitigated by long term savings to the consumer due to increased system operational life. System design based upon this regulation reduces potential for system failure and need for extensive and expensive repairs. Long-term results would be a net savings to the consumer.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Competition effects would only involve system

installers and would tend to promote competency and professionalism which would benefit the consumer.

(b) Reporting and paperwork requirements: Slight increase in reporting and paperwork for local health departments; however, such increase would be an asset in development of a data base for the overall program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $50,000. Will need two (2) additional technical staff positions. Soil Scientist Positions will provide desperately needed staff for field consultation and training.

2. Continuing costs or savings: $50,000. (See above.)

3. Additional factors increasing or decreasing costs: Additional costs can be mitigated by small increase in permit fees - KRS 211.350-211.380 provides for fees to support program.

(b) Reporting and paperwork requirements: Slight increase - necessary for data base development and research into alternative and innovative onsite systems.

(3) Assessment of anticipated effect on state and local revenues: Should show increase of revenue from source of ultimate consumer of onsite system. Only consumer using services provided would pay for service, not others.

(4) Assessment of alternative methods; reasons why alternatives were rejected: All other alternate methods will not produce improvements in onsite sewage disposal. Present status of onsite systems in Kentucky reveals an unacceptable failure rate which directly affects property values, public health and the environment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict - Natural Resources and Environmental Protection Cabinet regulates onsite systems with stream or surface discharge; Human Resources regulates onsite systems with subsurface discharge.

(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. Tiering applied to the extent that system sizing is based on specific wasteload generated and by soil/site conditions which require different system size, site modification, etc.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the March 11-12, 1985 Meeting

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 11, 1985 at 2 p.m. and on Tuesday, March 12, 1985 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 Senator Quinlan, seconded by Representative Bruce, the minutes of the February 11-12, 1985 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senators Harold Haering, Pat McCuiston and Bill Quinlan; Representatives James Bruce and Joe Meyer.

Guests: Richard L. Ross, Board of Pharmacy; Susan Stopher and Stephen Frank, Kentucky Real Estate Commission; Etta Ruth Kepp, Governor's Office of Policy and Management; George Geoghegan, Harness Racing Commission; Don McCormick, Department of Fish and Wildlife Resources; James Gregg, Clarence Salyer, William Sanders, H. M. Snodgrass, Nancy Kelly, Gary Steinhilber, Bernard Minnis, Jim Judge, and Gary Bale, Department of Education; Larry Wilson, Barbara Coleman, Ida Lyons, Ked Fitzpatrick, Clarence Marshall, Richard King, Eric Friedlander, Greg Lawther, Randall Hancock, and Sharon Rodriguez, Cabinet for Human Resources; Karen Powell, Sandra Pullen, C. R. Smith, G. C. Ethington, Jr., Don Mann, Duane Evans, and C. S. Layson, Transportation Cabinet; A. Leon Smothers, John T. Smither, Bill Gatewood, and Art Williams, Natural Resources and Environmental Protection Cabinet; Katie Nienaber.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, June Mabry, Donna Valencia, Mike Schillhahn, Paula Payne, Gerard Donovan, Chris Lilly, Mike Fleming, Stephen Mason, and Carla Arnold.

Press: Susan Warren, UPI; Mark York, WLEX-TV; Mark Chellegren, AP

The Administrative Regulation Review Subcommittee met on March 11-12, 1985, and submits the following report:

The Subcommittee determined that the following regulations, as amended, complied with the requirements of KRS Chapter 13A:

General Government Cabinet: Kentucky Real Estate Commission

201 KAR 11:180 (Promotion of out-of-state property, registration and prerequisites.) The subcommittee and agency agreed to amend the regulation to include sellers of time-shares regardless of location of property.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:061 (Intrastate toll bridges and toll ferries.) In response to questions raised by Representative Meyer, the regulation was amended to insure that the Shortway Toll Bridge was not exempted from compliance with 603 KAR 5:061 with regards to tolls and safety requirements. Representative Meyer requested that the department address the effect that the

repeal of KRS 280.310 had on the Shortway Toll Bridge. The department agreed to provide this information to the subcommittee.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance

903 KAR 5:280 (Appeals from notices of income tax refund intercept.) The subcommittee questioned whether the department provides thirty (30) day's notice of income tax refund intercept to the individual as provided by KRS 131.570. The agency agreed to amend the regulation to reflect that it did provide the notice required by KRS 131.570. The question was raised as to the costs incurred by the cabinet, and the agency agreed to amend the Regulatory Impact Analysis to reflect the costs that will be incurred. A third question was raised as to interception of employer's refunds, and the agency responded that there is no authority for interception of corporate refunds but other employers are considered "individuals" whose refunds can be intercepted.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A.

General Government Cabinet: Board of Pharmacy

201 KAR 2:040 (Registration of interns.)

201 KAR 2:190 (Return of prescription drugs prohibited.)

Tourism Cabinet: Fish and Wildlife Resources: Fish

301 KAR 1:016 (Private camps; boat docks, etc.) This regulation was technically amended to clarify the cutting of weeds or grass by adjacent land owners around lakes.

301 KAR 1:082 (Frog seasons; limits.) This regulation was technically amended to clarify that open season on bullfrogs ends at 12:00 midnight.

301 KAR 1:160 (Stocking procedures and fees for private waters.)

Natural Resources and Environmental Protection Cabinet: Department of Natural Resources: Water Quality

401 KAR 5:200 (Documents incorporated by reference for water quality and wastewater treatment.)

Department for Environmental Protection: Sanitary Engineering

401 KAR 6:040 (Water treatment plants; water distribution systems; certification of operators.) This regulation was technically amended to correct a typographical error.

Transportation Cabinet: Toll Facilities

600 KAR 2:010 (Toll assessment on turnpikes.) This regulation was technically amended to delete the Mountain Parkway from toll assessment requirements.

600 KAR 2:020 (Emergency vehicles and vehicles in processions on the toll roads.)

600 KAR 2:030 (Toll road credit cards.) Representative Meyer questioned whether service charges for credit card holders should be levied, and felt that non-credit card holders were subsidizing credit card holders and the state was losing revenues.

Department of Highways: Traffic

603 KAR 5:050 (Uniform traffic control devices.)

603 KAR 5:120 (Access control of highways.)

603 KAR 5:150 (Encroachment permits.)

Transportation Scholarship Program

603 KAR 8:010 (Transportation scholarship program.) The question was raised as to the inclusion of this program in the budget. Work papers showed that this program was specifically authorized; was not deleted at the conference on the budget bill during the 1984 General Assembly; and otherwise met the requirements of KRS Chapter 48.

Education and Humanities Cabinet: Department of Education: Office of Superintendent

701 KAR 5:060 (Code of ethics for state testing program.)

Office of Local Services: Buildings and Grounds

702 KAR 4:050 (Building sites; inspection, approval.)

School Terms, Attendance and Operation

702 KAR 7:030 (Census.)

Office of Instruction: Textbooks, Library and Instructional Materials

704 KAR 3:305 (Minimum unit requirements for high school graduation.) This regulation was technically amended to clarify that high school students must devote at least 60% of their classroom time to the basic skills requirements.

704 KAR 3:340 (Commonwealth diploma program.) This regulation was technically amended to clarify the alternatives available for obtaining a diploma.

704 KAR 3:345 (Evaluation guidelines.) This regulation was technically amended to clarify that superintendents shall be evaluated not less than every two years, and to delete unnecessary language.

Student Services

704 KAR 7:050 (Student discipline guidelines.)

Teacher Certification

704 KAR 20:310 (Written examination and internship prerequisites for vocational teachers.)

Public Protection and Regulation Cabinet: Kentucky Harness Racing Commission: Harness Racing Rules

811 KAR 1:160 (Association with undesirables prohibited.)

811 KAR 1:215 (Kentucky standardbred development fund.)

Cabinet for Human Resources: Department for Health Services: Local Health Departments

902 KAR 8:020 (Policies and procedures for local health department operations.) Questions were raised over the exemption of an admitted conflict of interest in cases where the only health providers available served on local boards of health. Representative Meyer suggested that standards be developed to determine the proper method in awarding contracts or hiring under this regulation where a conflict of interest question arises. The subcommittee moved to refer this regulation to the Interim Joint Committee on Health and Welfare for their review and recommendations they deem appropriate.

Hospitalization of Mentally Ill and Mentally Retarded

Certificate of Need and Licensure

902 KAR 20:041 (Operation and services family care homes.)

Department for Employment Services: Unemployment Insurance

903 KAR 5:150 (Determination defined.)

903 KAR 5:260 (Unemployment insurance procedures.)

Employment Services

903 KAR 6:050 (Veterans' benefits.)

Department for Social Insurance: Medical Assistance

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

904 KAR 1:011 (Technical eligibility requirements.) Senator Haering questioned the large increase in cost in light of current economic conditions and the possibility of cuts in federal funds. The agency responded that this program was federally mandated and that federal funds were available.

904 KAR 1:045 (Payments for mental health center services.) Representative Meyer stated that the 1984 budget bill imposed a 15 percent cap on administrative fees or costs reimbursement; unless the services were contracted out, in which case the budget bill provided for a 20 percent cap. He added that the agency kept 15% even if services were contracted out. The agency responded that this regulation was limited to payments to itself. Representative Meyer felt that the subcontractor should be entitled to the 15% and the department limited to 5% of the cap on costs as provided in the budget bill. He suggested that the regulation be amended to provide for this distribution of administrative costs to reflect the intent of the 1984 budget bill. Additionally, the cap should be noted as an allowable cost. The subcommittee moved to refer this regulation to the Interim Joint Committees on Health and Welfare, and Appropriations and Revenue for review and report to the subcommittee.

904 KAR 1:250 (Incorporation by reference of materials relating to the Medical Assistance Program.)

Public Assistance

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

904 KAR 2:150 (Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program.)

904 KAR 2:170 (Incorporation by reference of materials relating to the Child Support Program.)

Food Stamp Program

904 KAR 3:045 (Coupon issuance procedures.)

904 KAR 3:090 (Incorporation by reference of materials relating to the Food Stamp Program.)

The following regulations were deferred at the agency's request.

Education and Humanities Cabinet: Department of Education: Teacher Education

704 KAR 15:090 (Incentive loan program; mathematics and science.)

Cabinet for Human Resources: Department for Health Services: Hospitalization of Mentally Ill/Mentally Retarded

902 KAR 12:080 (Policies and procedures for mental health/mental retardation facilities.)

The Subcommittee had no objections to emergency regulations which had been filed.

The subcommittee adjourned at 11:15 a.m. until April 8, 1985.

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401 KAR 57:040	888	1-7-85
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401 KAR 59:035		
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401 KAR 59:036	889	1-7-85
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Repealed	890	1-7-85
401 KAR 59:049	890	1-7-85
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Repealed	893	1-7-85
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