Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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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 November 11 and 12, 1985. For information, call 502-564-8100, ext. 312.

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Title		Chapter		Regulation
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Cabinet, Department, Board or Agency		Bureau, Division, or Major Function		Specific Area of Regulation

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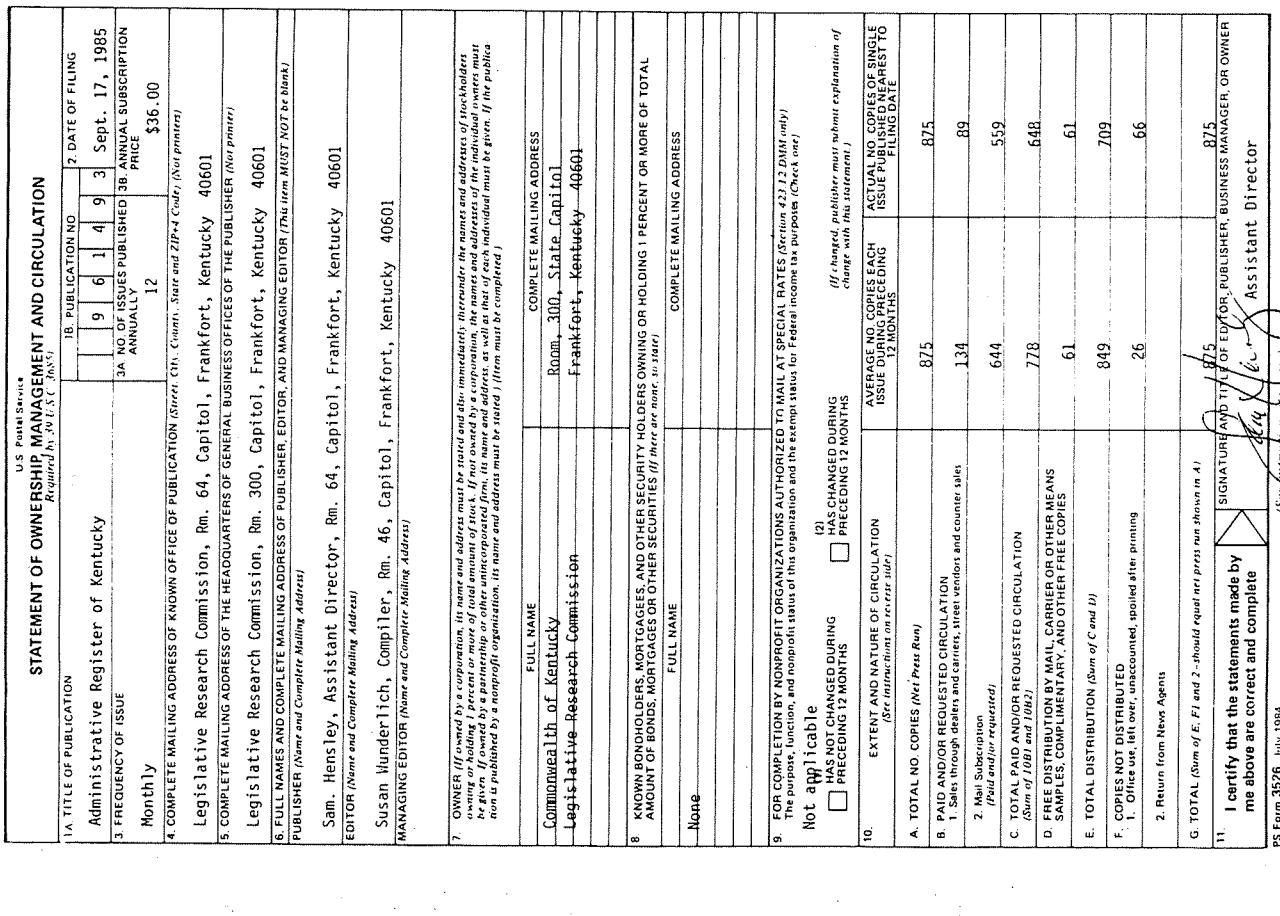
The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication of the administrative 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.

<u>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.</u>

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.

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PS Form 3526, July 1984

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY

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

MARTHA LAYNE COLLINS, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:220E. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630

PURSUANT TO: KRS 13A.350, 150.025

EFFECTIVE: October 1, 1985

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for Gun and Archery. (1) Ducks, coots and mergansers: November 28 through December 1 and December 9 through January 13.

(2) Geese:

(a) Eastern Zone: November 28 through January 20, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

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

1. Ballard quota zone: December 23 through January 31, or until such time as 4,400 Canada geese are harvested, whichever occurs first. This zone is defined as the area within the following boundary: Starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 4,400 Canada geese will be filled prior to January 31, the goose hunting season will close in the Ballard quota zone and in those portions of Ballard, McCracken, Graves, Carlisle, Hickman, Fulton and Marshall Counties in the Western Zone. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. Henderson-Union quota zone: December 23 through January 31, or until such time as 1,400 Canada geese are harvested, whichever occurs first. This quota zone includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 1,400 Canada geese will be filled prior to January 31, the goose hunting season in this zone and those portions of Lyon, Crittenden and Livingston Counties in the Western Zone will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(3) Sora and Virginia Rails and Gallinules: November 28 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks: The daily bag limit is four (4), and may include no more than two (2) mallards (no more than one (1) of which may be a female), one (1) black duck, two (2) wood ducks, two (2) pintails, one (1) canvasback and one (1) redhead. The possession limit is the maximum number of ducks which could have legally been taken in two (2) days.

(2) Mergansers: The daily bag limit is five (5), only one (1) of which may be a hooded merganser. The possession limit is ten (10),

only two (2) of which may be hooded mergansers.
(3) Coots: The daily bag limit is fifteen (15) and the possession limit is thirty (30).
(4) Geese:
(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese.
(b) The possession limit is ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.
(5) Sora and Virginia Rails: The bag and possession limits are twenty-five (25) singly or in the aggregate.
(6) Gallinules: The bag and possession limits are fifteen (15) and thirty (30), respectively.

Section 3. Shooting Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except that shooting hours in the Ballard quota zone will be one-half (1/2) hour before sunrise to 2:00 p.m. for ducks, geese, coots and mergansers during the goose season in the Ballard quota zone.

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

Section 5. Falconry Season. November 1 through Janaury 20. All species listed in this regulation may be taken by falconry.
(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any species listed in this regulation, singly or in the aggregate.
(2) Hunting hours for falconry. The hunting hours will conform with the shooting hours stated in Sections 3 and 7 of this regulation.

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

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Unless otherwise specified in this section, stipulations of the other sections of this regulation apply.
(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.
(a) Species and seasons.
1. The season for ducks, coots and mergansers is December 26 through January 13.
2. The season for geese is December 26 through January 31, or until such time as the Ballard quota zone is closed, whichever occurs first.
3. No hunting is permitted on Sundays.
4. No more than three (3) persons shall occupy a single blind or pit at the same time.
(b) General rules. There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from blinds and pits is furnished by the department must have his gun encased.
(c) Shooting hours. The shooting hours are one-half (1/2) hour before sunrise to 12:00 noon.
(2) Peal Wildlife Management Area. That portion of the Peal Wildlife Area as designated by signs is closed to the public from October 15 through March 15. No person, except agents of the department and the U.S. Fish and Wildlife Service, shall enter upon this portion of the Peal Wildlife Area during the closed period. Waterfowl hunting on Fish Lake will be permitted from designated locations only. No more than one (1) blind may be placed at each designated location and all blinds must be removed daily. No more than three (3) persons may occupy a blind at one time.
(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Closed area. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. Duncan Bay is closed to all activity. The Environmental Education Center is closed to waterfowl hunting.
(b) LBL permit. An annual LBL hunting permit is required for waterfowl hunting on all shoreline and inland areas. Shoreline areas are defined as all LBL areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359'. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to Lake Barkley Wildlife Management Area regulations. Inland areas are defined as all areas above shoreline areas. No waterfowl hunting is permitted on inland areas during quota gun deer hunt days. Permanent blinds and pits are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds must be removed at the end of each hunting day.
(4) Lake Barkley Wildlife Management Area.
(a) Closed areas. Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, Fulton Bay will remain closed until March 15 and Honker Bay until March 1, or later if marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15.
(b) Blinds and pits. Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must remain within ten (10) yards of the assigned numbered blind marker within the area described as follows: Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area must be temporary.
(5) Sloughs Wildlife Management Area located in Henderson and Union Counties.

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

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

(c) Shooting hours. One-half (1/2) hour before sunrise to 2:00 p.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(18) Blind and pit restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas, and the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek units of the Sloughs Wildlife management Area.

(a) Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must be registered on a permit issued by the U.S. Army Corps of Engineers or the Department of Fish and Wildlife Resources. Applicants for blind or pit permits must present a current Kentucky hunting license to the registration clerk. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits may be issued for each permanent blind or pit. Only one (1) permit will be issued per hunter per area. Permittees who have not constructed a pit or blind at the designated location by November 20 will forfeit their permit. Sites which become available by forfeiture may be assigned to another applicant.

(b) Blinds or pits not occupied by permittees by the opening of shooting hours of any day are available for use by other hunters on a first come-first served basis for the remainder of that day.

(c) Permittees shall not lock blinds or pits so as to prevent use by other hunters in the absence of the permittee.

(d) No blind or pit may be established less than 200 yards from any other blind or pit or waterfowl refuge.

(e) No more than four (4) persons shall occupy a blind or pit at any one time.

(f) Designated recreation areas and access points are closed to waterfowl hunting.

(g) Permanent pits or blinds must be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

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

(1) Commercial waterfowl hunting areas.

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

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

individual area.

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

(2) Non-commercial waterfowl hunting areas.

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

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

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

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

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

(4) Obtaining permits and harvest reporting forms.

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

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

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

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

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

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

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

(2) Migratory goose hunting area permit holders.

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

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

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

(3) Hunter requirements.

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

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

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

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. No later than Monday and Thursday of each week, mail or take the completed original copy of the waterfowl harvest register to the address indicated on the form.

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

(2) It is unlawful to establish or use any

blind or pit for the hunting of waterfowl within 100 yards of any other blind or pit.

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

(4) No more than five (5) persons may occupy a single blind or pit at the same time.

(5) A hunter may possess only one (1) shotgun while occupying a blind or pit.

Section 11. Kentucky Waterfowl Stamp Requirements. (1) Persons sixteen (16) through sixty-four (64) years of age hunting wild ducks or geese shall possess, in addition to the appropriate hunting license, a Kentucky waterfowl stamp unless exempted under the provisions of KRS 150.170(3), (6), or (7).

(2) To be valid for hunting, said stamp shall be signed across the face by the bearer and fixed adhesively to the back of the bearer's hunting license. This stamp shall not be transferable.

Section 12. 301 KAR 2:200, Migratory bird hunting seasons, is hereby repealed.

G. WENDELL COMBS, Secretary
DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: September 30, 1985
FILED WITH LRC: October 1, 1985 at 2 p.m.

STATEMENT OF EMERGENCY

The attached regulation, 815 KAR 7:013E, Kentucky Building Code plan review fees, is submitted as an emergency regulation and an ordinary regulation will not suffice because 815 KAR 7:012 has lapsed by operation of law pursuant to KRS 13A.340 and this new regulation is necessary to continue publication of the statement of plan review fees necessary to cover the cost of enforcement of the Kentucky Building Code program. This regulation will be replaced by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor
MELVIN WILSON, Secretary

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

815 KAR 7:013E. Kentucky building code plan review fees.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.050(5), 198B.060(10)
EFFECTIVE DATE: September 25, 1985
NECESSITY AND FUNCTION: KRS 198B.050(5) authorizes the Board of Housing, Buildings and Construction to issue regulations which are necessary to implement the Kentucky Building Code, and KRS 198B.060(10) authorizes the department to create a schedule of fees to fully cover the cost of the services performed under the code. The fees set forth herein are identical to the fee schedule used by the department since December of 1982.

Section 1. Submission of Plans and Fees. (1) All plans and specifications required to be submitted to the department under the Kentucky Building Code shall be accompanied by the applicable fee as set forth in this regulation, rounded to the nearest dollar.

(2) All fees required herein shall be in check form payable to the Kentucky State Treasurer.

(3) No approval for construction shall be issued by the department until all required fees have been paid.

(4) The plan review fees required by this regulation are intended to cover the cost of corresponding inspections for compliance with such plans.

Section 2. New Construction. (1) Departmental plan review fees for new buildings shall be calculated by multiplying the total square footage times the cost per square foot of each occupancy type as listed in the following table. Total square footage will be determined by the outside dimensions of the building. Minimum fee for review of plans under this section will be fifty (50) dollars.

Occupancy Type	Cost per Square Foot
Residential (excluding single family dwellings and duplexes)	2 cents
Assembly Occupancies	
Nightclub/restaurants	3.5 cents
All other assembly	3 cents
Educational	2 cents
Day care centers	2 cents
Business	2 cents
Mercantile	2 cents
Industrial factories	2 cents
Warehouses	1.5 cents
Institutional	2.5 cents
Frozen food plants	2 cents
High hazard	3 cents
All other non-residential	2 cents

(2) Plan review fees for additions to existing buildings, which do not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with subsection (1) of this section by the measurement of the square footage of the addition, only, as determined by the outside dimensions of the addition. Minimum fee for review of plans under this section will be fifty (50) dollars.

(3) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with subsection (1) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. Minimum fee for review of plans under this section will be fifty (50) dollars.

(4) Plan review fees for alternations and repairs not otherwise covered by this section shall be calculated by multiplying the cost for the repairs by .001.

Section 3. Specialized Fees. In addition to the fees required by Section 2 of this regulation, the following fees must be paid for the specialized plan reviews listed:

(1) Sprinkler fees:

Automatic Sprinkler Review Fee Table

Sprinkler Heads	Plan Review Fee
4-200	$50
201-300	60
301-400	80
401-750	100
over 750	$100 plus 10 cents per sprinkler over 750

(2) Fire detection system review fee: ten (10) dollars per 5,000 square feet up to 70,000 square feet; over 70,000 square feet - $140 plus fifteen (15) dollars per each additional 20,000 square feet.

(3) Standpipe plan review fee: thirty (30) dollars (Combination standpipe and riser plans will be reviewed under automatic sprinkler review fee schedule.)

(4) Carbon dioxide suppression system review fee: 1 to 200 pounds of agent - fifty (50) dollars; over 200 pounds of agent - fifty (50) dollars plus two (2) cents per pound in excess of 200 pounds.

(5) Halon suppression system review fee: Up to thirty-five (35) pounds of agent - fifty (50) dollars; over thirty-five (35) pounds - fifty (50) dollars plus five (5) cents per pound in excess of thirty-five (35) pounds.

(6) Foam suppression system review fee: one (1) dollar per gallon of foam concentrate. The fee for review of plans under this section shall not be less than fifty (50) dollars or more than $1,000.

(7) Commercial range hood review fee: twenty (20) dollars per hood.

(8) Dry chemical systems review fee (except range hoods): 1 to 30 pounds of agent - thirty (30) dollars; over thirty (30) pounds of agent - thirty (30) dollars plus twenty (20) cents per pound in excess of thirty (30) pounds.

(9) Flammable liquid or pressure tank fee: twenty-five (25) dollars for the first tank and five (5) dollars for each additional tank.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: September 23, 1985
FILED WITH LRC: September 25, 1985 at 3 p.m.

STATEMENT OF EMERGENCY

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

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

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

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: September 26, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

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

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

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised <u>September 26, 1985</u> [October 1, 1984], which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

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

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental

agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. [The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs.] For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30the of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) Freestanding (non-hospital based) facilities will be arrayed and [Allowable costs will then be indexed for inflation for the rate year, and] the maximum set at 102 [105] percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 135 [165] percent of 102 [105] percent of the median of allowable trended [and indexed] costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985 [1982], so that the maximum payment amount for the prospective uniform rate year will be at 102 [105] percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for freestanding SNFs and basic ICFs, except that the [no] maximum (upper limit) shall be set at 110 percent of the median of the array [imposed].

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

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

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

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

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

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

beds (all levels).

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

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

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

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

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

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending [,indexing] and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Division for Medical Assistance shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

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

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

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

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

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

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

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

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

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs

(a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth in the Social Security Act (as amended by the Deficit Reduction Act of 1984) and shown herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) The Social Security Act, Section 1861(v)(1)(O) (as published in the Commerce Clearing House Medicare/Medicaid Guide) specifies the following:

"(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of the date of the enactment of this subparagraph, (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner."

"(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984."

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title."

(b) The Social Security Act, Section 1902(a)(13) (as published in the Commerce Clearing House Medicare/Medicaid Guide) further specifies the following:

"(B) That the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O)."

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

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

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

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

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

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

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

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

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

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

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

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

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Each ICF which admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:

(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF; and

(b) The incentive payment may be paid for more

than ninety (90) covered days of care only if all such days are prior to February 1, 1986.

(20) Each ICF which admits a recipient from an SNF on or after February 1, 1986 as a result of a change of patient status (from SNF to ICF) shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.

(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.

(22) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

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

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

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year [and increased by a percentage] so as to reasonably take into account economic conditions and trends. [Such percentage increase shall be known as an inflation factor].

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

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

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
[$26.99 & below*	-	-]
$27.00 & below [- 27.99]	$.92 [1.38]	$.58 [.87]
28.00 - 28.99	$.86 [1.29]	$.50 [.75]
29.00 - 29.99	$.78 [1.18]	$.41 [.62]
30.00 - 30.99	$.70 [1.06]	$.32 [.47]
31.00 - 31.99	$.61 [.92]	$.21 [.31]
32.00 - 32.99	$.51 [.76]	$.09 [.13]
33.00 - 33.95 [35.05]	$.35 [.53]	-

Maximum Payment $33.95 [35.05]

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below*	-	-
57.00 - 62.99	$1.38	$.87
63.00 - 68.99	$1.29	$.75
69.00 - 74.99	$1.18	$.62
75.00 - 80.99	$1.06	$.47
81.00 - 86.99	$ .92	$.31
87.00 - 92.99	$ .76	$.13
93.00 - 99.06 [98.99]	$ .53	-

Maximum Payment $99.06

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below	$.92	$.58
37.00 - 38.99	.86	.50
39.00 - 40.99	.78	.41
41.00 - 42.99	.70	.32
43.00 - 44.99	.61	.21
45.00 - 46.99	.51	.09
47.00 - 48.72	.35	-
[$36.99 & below*	-	-
37.00 - 38.99	$1.38	$.87
39.00 - 40.99	$1.29	$.75
41.00 - 42.99	$1.18	$.62
43.00 - 44.99	$1.06	$.47
45.00 - 46.99	$ .92	$.31
47.00 - 48.99	$ .76	$.13
49.00 - 52.39	$ .53	-]

Maximum Payment $48.72* [52.39**]

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

[*]*The maximum payment for hospital based skilled nursing facilities is set at $65.77 [84.14].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 [105] percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 [105] percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 [1982] and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 [105] percent of the median is a lower dollar amount than has been currently set.

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

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

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

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

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

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

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

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.
(f) Psychological and psychiatric therapy (for ICF/MR only).
(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.
(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with [the inflation factor,] the occupancy factor and the median cost center per diem upper limits.
[(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.]
(5) [(6)] "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.
(6) [(7)] "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.
(7) [(8)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.
(8) [(9)] "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.
(9) [(10)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.
(10) [(11)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.
(11) [(12)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:
(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.
(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.
(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.
(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.
(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.
(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after September 26, 1985 except as otherwise specified herein [October 1, 1984].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 25, 1985
FILED WITH LRC: September 26, 1985 at 4 p.m.

STATEMENT OF EMERGENCY

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

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

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

904 KAR 1:250E. Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 194.030(6), 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: October 8, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medical Assistance Program and is applicable for both the categorically and medically needy.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Medical Assistance Program, subject to the provisions contained in 904 KAR 2:140, Section 1,

Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Material. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal Medicaid regulations at 42 CFR Parts 430-456, and interim final regulations at 42 CFR Parts 430-456, effective October [July] 1, 1985. The regulations contain federal supplementary policies, interpretations and implementing instructions for the Medical Assistance Program as authorized by Title XIX of the Social Security Act.

(2) Federal "State Medicaid Manual," effective October [July] 1, 1985. The "State Medicaid Manual" contains federal interpretations and clarifications of policy relating to implementation of the Medical Assistance Program.

(3) Federal action transmittals and program memoranda issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, 79-72, 79-98, 80-9, 80-59, 81-23, 81-33, 81-35, 82-1, 82-2, 82-20, 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, 84-5, 84-10, 84-16, 85-1, and HCFA PM-85-4, 85-10, and 85-13, effective October [July] 1, 1985. Action transmittals and program memoranda contain federal instructions relating to implementation of the Medical Assistance Program.

(4) Federal transmittal notices issued by the Health Care Financing Administration as follows: DQC-1-82, 10-82; DPO-76-81, 77-81, 78-81; MCD-46-81, 48-81, 55-81, 61-81, 62-81, 64-81, 67-81, 82-81, 86-81, 87-81, 89-81, 92-81, 1-82, 2-82, 6-82, 7-82, 10-82, 14-82, 16-82, 17-82, 18-82, 19-82, 25-82, 26-82, 28-82, 30-82, 33-82, 34-82, 35-82, 38-82, 41-82, 42-82, 50-82, 52-82, 2-83, 5-83, 9-83, 11-83, 12-83, 13-83, 14-83, 15-83, 19-83, 20-83, 26-83, 28-83, 29-83, 30-83, 35-83, 39-83, 40-83, 42-83, 1-84, 6-84, 7-84, 8-84, 9-84, 11-84, 13-84, 14-84, 15-84, 16-84, 18-84, 20-84, 23-84, 24-84, 25-84, 26-84, 27-84, 29-84, 34-84, 35-84, 36-84, 39-84, 48-84, 50-84, 51-84, 55-84, 2-85, 4-85, 5-85, 6-85, 8-85, 10-85, 11-85, 14-85, 18-85, 19-85, 21-85, 22-85, 23-85, 24-85, [and] 25-85, 27-85, 28-85, 29-85, 30-85, 31-85, 32-85, 33-85, 34-85, 36-85, 37-85, 38-85, 39-85, 41-85, 42-85, and 43-85, effective October [July] 1, 1985. Transmittal notices contain federal clarifications of policy relating to implementation of the Medical Assistance Program.

(5) Medicare and Medicaid Guide, Volumes I, II, III, and IV, as published by the Commerce Clearing House, Inc., with the following related new developments transfer binders: 1981-1, 1981-2, 1982, 1983-1, 1983-2, and 1984-1, effective October [July] 1, 1985. The Medicare and Medicaid Guide contains reprints of federal laws and regulations relating to the Medicare and Medicaid programs; reprints of Medicare/Medicaid related court decisions; Medicare principles of reimbursement; summaries of state plan characteristics; and other items of general information relating to the Medicare and Medicaid programs. Although the cabinet is bound by federal Medicaid law and regulations in the implementation of the Medical Assistance Program, the Guide is used principally as supplementary material for reimbursement issues in situations where the cabinet's vendor reimbursement system uses the Medicare cost principles in unaddressed areas.

(6) State Medicaid Program policies and procedures manuals and letters issued by the cabinet, and which contain benefit descriptions and operating instructions used by agency staff and participating vendors in the provision of, and billing for, Medical Assistance benefits provided eligible program recipients, as follows:

(a) Home and Community Based Services Waiver Project Adult Day Health Care Services, effective October [July] 1, 1985;

(b) Alternative Intermediate Services/Mental Retardation Project, effective October [July] 1, 1985;

(c) Birthing Center Services, effective October [January] 1, 1985;

(d) Community Mental Health Benefits, effective July 1, 1985;

(e) Dental Benefits, effective October [July] 1, 1985;

(f) Early and Periodic Screening, Diagnosis and Treatment Benefits, effective July 1, 1985;

(g) Family Planning Benefits, effective October [July] 1, 1985;

(h) Hearing Services Benefits, effective October [July] 1, 1985;

(i) Home and Community Based Services Waiver Project, effective October [July] 1, 1985;

(j) Home Health Benefits, effective October [July] 1, 1985;

(k) Hospital Services Benefits, effective October [July] 1, 1985;

(l) Independent Laboratory Services Benefits, effective October [July] 1, 1985;

(m) Intermediate Care Facility Benefits, effective October [January] 1, 1985;

(n) Mental Hospital Services Benefits, effective October [July] 1, 1985;

(o) Nurse Anesthetist Services, effective July 1, 1985;

(p) Nurse Midwife, effective October [July] 1, 1985;

(q) Pharmacy Services, effective October [July] 1, 1985;

(r) Physician Services Benefits, effective October [July] 1, 1985;

(s) Primary Care Benefits, effective October [July] 1, 1985;

(t) Rural Health Clinic Benefits, effective October [July] 1, 1985;

(u) Skilled Nursing Facility Benefits, effective October [January] 1, 1985;

(v) Ambulance Transportation Benefits, effective May 16, 1984, as revised;

(w) Vision Services Benefits, effective October [July] 1, 1985;

(x) Podiatry Services, effective October [July] 1, 1985;

(y) Ambulatory Surgical Center Benefits, effective July 1, 1985;

(z) Renal Dialysis Center Benefits, effective October [July] 1, 1985;

(aa) General Provider Letter A-8, effective July 1, 1985;

(bb) Medical Director's Letter dated April 26, 1985, effective July 1, 1985; and

(cc) EDS Federal Hospital Letter (as fiscal agent for the Medicaid Program) dated April 1, 1985, effective July 1, 1985.

Section 3. All documents included by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon

payment of an appropriate fee which will not exceed approximate cost.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.

STATEMENT OF EMERGENCY

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

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

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

904 KAR 2:116E. Low income home energy assistance program.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
EFFECTIVE: September 27, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of two (2) [three (3)] components of energy assistance, subsidy [, hardship,] and crisis [emergency heating assistance] under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household or authorized representative of the household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Definitions. Terms used in HEAP are defined as follows:
(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.
(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.
(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.
(4) "Economic unit" is one (1) or more persons sharing common living arrangements.
(5) "Subsidy component" is that portion of benefits reserved as energy assistance for heating.
[(6) "Hardship component" is that portion of benefits reserved for energy crisis assistance after the subsidy component is terminated. The hardship component is for eligible households who are without heat.]
(6) [(7)] "Crisis [Emergency heating assistance] component" is that component administered by local organizations under contract with the cabinet to provide fuel, heaters, blankets and/or sleeping bags, [or] vouchers to purchase these items, or minor repair of the heating system to eligible households who are without heat, or will be without fuel within five (5) days, or receive a notice of disconnection of service, or require a heat system repair to obtain adequate heat [or would be without heat before a fuel supply could be delivered].

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy [, hardship,] and crisis [emergency heating assistance] components:
(a) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.
(b) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$418 [415]	$ 5,775 [4,980]
2	646 [560]	7,755 [6,720]
3	811 [705]	9,735 [8,460]
4 [or more]	976 [850]	11,715 [10,200]
5	1,141	13,695
6	1,306	15,675

(c) [If federal law prohibits setting income eligibility limits below 100 percent of poverty, then] For each household member more than six (6) [four (4)], the above income eligibility limitation for six (6) [four (4) or more] will be increased by $165 [145] monthly or $1,980 [1,740] yearly for each additional household member.

(d) The household must have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if said cash is income considered under paragraph (a) of this subsection.

[(e) Applicants for the hardship component must attest that an immediate need for energy exists because the household is without heat.]

(e) [(f)] Applicants for the crisis [emergency heating assistance] component must be without heat, or will be without fuel within five (5) days, or have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat [or would be without heat before a fuel supply can be delivered].

(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits [, hardship, and the emergency heating assistance components].

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis [hardship] components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit [payment] relative to energy costs. In the subsidy component, the highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component will be made for the full benefit amount based on [program component,] type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$138	$150
$401 - 800	$120	$132
over $800	---	$113

Scale B.
Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$125	$137
$401 - 800	$107	$119
over $800	---	$100

[Hardship Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$276	$300
$401 - 800	$239	$263
over $800	---	$226

Scale B.
Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$250	$274
$401 - 800	$213	$237
over $800	---	$200]

(2) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy [or hardship] component may be reduced proportionately.

(3) Benefits to eligible households under the crisis [emergency heating assistance] component shall be in the form of fuel or other energy for heating, heaters, blankets, and/or sleeping bags, [or] vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency will determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 [$150] total benefit value per eligible household [, unless the minimum amount of fuel that a vendor will supply exceeds that value, in which case the amount necessary to obtain delivery may be provided as benefit not to exceed $300 per eligible household].

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as

follows:

(1) Whenever feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

[(2) Payment under the hardship component is authorized by a one (1) party check made payable to the energy provider (landlord) only, unless the provider refuses to accept the payment on behalf of the recipient and deliver or restore service, whereupon, the payment will be made to the recipient only. All payments will be mailed to the recipient.]

(2) [(3)] When a two (2) party check is not issued under the subsidy [or hardship] component, the recipient shall sign a statement as part of the application prior to receipt of funds affirming that benefits received under HEAP shall be utilized solely for home energy.

(3) [(4)] Under the subsidy [and hardship] component, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy for heating [under the appropriate component]. The household will decide how to divide payment if more than one (1) provider is used.

(4) [(5)] For the crisis [emergency heating assistance] component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component will be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, and/or sleeping bags, restoration or continuation of service, or upon repair of the heating system.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. The cabinet or its representative shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the subsidy component shall be accepted as follows:

(a) Households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability may apply beginning October 21, 1985 [15, 1984] and ending no later than October 31, 1985 [26, 1984].

(b) Applications shall be accepted from all households beginning November 18, 1985 [12, 1984] and ending no later than December 31, 1985 [1984].

(2) Applications for the crisis [hardship] component shall be accepted beginning January 6, 1986 [7, 1985] and ending no later than April 30, 1986 [May 31, 1985].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy and crisis [hardship] components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or April 30, 1986 [May 31, 1985], whichever comes first.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

[(5) The emergency heating assistance component may be implemented by the contracting agency on February 1, 1985. Benefits shall be provided until funds are exhausted or May 31, 1985, whichever comes first.]

Section 9. Allocation of Funds. (1) Up to fifteen (15) [thirteen (13)] percent of the total HEAP allocation shall be reserved for weatherization assistance. Up to $500,000 of this allocation shall be reserved for the Gas Furnace Retrofit Pilot Project.

[(2) Up to two (2) percent or a minimum of $500,000 shall be reserved for the Gas Furnace Retrofit Pilot Project.]

(2) [(3)] Up to $6,000,000 [4,000,000] shall be reserved for the crisis [hardship] component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by county, based upon the poverty level of the counties in accordance with the 1980 Census. Fifteen (15) percent of the funds shall be held by the contracting agency as a contingency fund to be allocated in any county of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 14, 1986, all unobligated allocations shall revert to the contingency fund for low income home energy assistance to be distributed at the discretion of the contracting agency. [Fifty (50) percent of the funds reserved under the hardship component shall be available for households whose primary source of energy for heating is electricity or natural gas and fifty (50) percent shall be available for all other sources of energy. Any funds remaining available from the subsidy component shall be made available under the hardship component.]

(3) [(4)] Remaining benefit funds available under Public Law 97-35 shall be reserved for the subsidy component. Fifty (50) percent of the funds available under the subsidy component shall be reserved for households eligible to apply beginning October 21, 1985 [15, 1984] and ending no later than October 31, 1985 [26, 1984]. The remaining fifty (50) percent plus any funds remaining available after October 31, 1985 [26, 1984] shall be reserved for households applying beginning November 18, 1985 [12, 1984] and ending no later than December 31, 1985 [1984]. Any funds remaining available under the subsidy component after December 31, 1985 [1984] shall be made available under the crisis [hardship] component contingency fund held by the contracting agency.

(4) [(5)] Up to $500,000 of any subsidy component funds remaining unobligated may, at the discretion of the Department for Social Insurance, be reserved for households who are without heat under the contracting agency administered crisis component, if all funds allocated and otherwise made available to the

crisis component are obligated prior to March 15, 1986. [shall be reserved for administration and implementation of the emergency heating assistance component.]

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated adversely [differently] than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 24, 1985
FILED WITH LRC: September 27, 1985 at 9 a.m.

STATEMENT OF EMERGENCY

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

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

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

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

RELATES TO: KRS 194.030(6), Chapter 205
PURSUANT TO: KRS 194.050
EFFECTIVE: October 8, 1985
NECESSITY AND FUNCTION: KRS 194.010 designates the Cabinet for Human Resources as the primary state agency responsible for the development and operation of assistance programs, and KRS 194.050 empowers the secretary of the Cabinet for Human Resources to adopt, administer and enforce regulations sufficient to operate the programs and fulfill the responsibilities vested in the cabinet. This regulation states the general policy of the cabinet with regard to program materials incorporated into regulatory form by reference for use by the Department for Social Insurance, and incorporates by reference materials related to the programs of aid to families with dependent children, medical assistance, home energy assistance, refugee assistance, food stamps, child support enforcement, state supplemental payments for the aged, blind or disabled, disability determination, and collections which are essential for the implementation of those programs.

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

(2) Materials incorporated by reference shall be construed and interpreted in such a manner as to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations.

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

(1) Department for Social Insurance Manual of Operations, effective October [July] 1, 1985. The Manual of Operations provides operating instructions, procedural detail, and technical clarification for use of the department's field staff in implementing programs, under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; and medical assistance.

(2) Department for Social Insurance Manual of Forms, effective October [July] 1, 1985. The Manual of Forms provides forms with instructions for completion, usage, distribution and files maintenance for use of the department's field staff in implementing programs under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; medical assistance; and the food stamp program.

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective October 1, 1985 [May 16, 1984]. Part 16, Procedures of the Departmental Grant Appeals Board, provides requirements and procedures applicable to resolution of certain disputes arising under several assistance programs funded by the United States Department of Health and Human Services. Part 74, Administration of Grants, establishes uniform requirements for the administration of grants provided under the authority of the United States Department of Health and Human Services, and principles for determining costs applicable to activities assisted by Department of Health and Human Services grants. Part 95, General Administration - Grant Programs (Public Assistance and Medical Assistance), establishes requirements of the United States Department of Health and Human Services for various

administrative matters relating to grant programs, including time limits for states to file claims, cost allocation plans, and conditions for federal financial participation for automatic data processing equipment and services.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.

STATEMENT OF EMERGENCY

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

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

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

904 KAR 2:170E. Incorporation by reference of materials relating to the Child Support Program.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 194.050
EFFECTIVE: October 8, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800, [and] 205.992, and KRS 405.400 to KRS 405.530. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Child Support Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Child Support Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal child support regulations at 45 CFR Parts 300-399, which set forth the requirements and guidelines for the administration of the Child Support Program, effective October [July] 1, 1985;

(2) Federal Office of Child Support Enforcement Action Transmittals, which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations, as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-15, 83-18, and 84-05, effective October 1, 1984;

(3) Department for Social Insurance Child Support Manual of Procedures, which provides operational instructions and procedural detail for the implementation of the child support enforcement program, effective October [July] 1, 1985;

(4) Department for Social Insurance Child Support System Handbook, which provides systems and data processing instructions for the implementation of the child support enforcement program, effective October [July] 1, 1985; [and]

(5) Department for Social Insurance Child Support Action Memorandums, which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program, as follows: DCSE-AM-82-07, 82-36, 83-16, 83-21, 83-30, 83-31, 83-38, 83-39, 83-48, 84-10, 84-16, 84-18, 84-19, 84-20, 84-29, 84-34, 84-36, [84-41,] 85-10, 85-19, 85-22, and 85-27, [and 85-15] effective October [July] 1, 1985; and [.]

(6) Department for Social Insurance Child Support Administrative Process Manual, which provides operational instructions and procedural detail for the implementation of administrative procedures in the child support enforcement program, effective October 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.

STATEMENT OF EMERGENCY

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

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

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

904 KAR 3:090E. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
EFFECTIVE: October 8, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977 as amended, and 7 CFR Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:
(1) Federal food stamp regulations at 7 CFR Parts 250, 251 and 271-282, which set forth the federal requirements and guidelines for the administration of the Food Stamp Program and federal food stamp general notices published through the Federal Register, effective July 1, 1985;
(2) Department for Social Insurance Food Stamp Handbook, which provides operating instructions, procedural detail and technical clarification for use by the department's field staff in administering the Food Stamp Program, effective July [April] 1, 1985; and
(3) Federal food stamp regional letters, which set forth federal clarification of federal food stamp regulations, as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, 84-36, 84-37, 84-38, 84-39, 84-40, 84-41, 84-42, 84-43, 84-45, 84-46, 84-47, 84-48, and 84-49, effective January 1, 1985.
(4) Federal Food and Nutrition Service South East Regional Office (SERO) regulations supplement which sets forth federal policy clearances of federal regulations specified in subsection (1) of this section, effective October [July] 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.

PROPOSED AMENDMENTS

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 1:140. Service regulations.

RELATES TO: KRS 18A.030, 18A.075, 18A.110
PURSUANT TO: KRS 13A.100, 18A.030, 18A.075, 18A.110
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.030 and 18A.110 require the Commissioner of Personnel to prepare and submit to the Personnel Board rules which provide for annual leave, sick leave, special leaves of absence, and for other conditions of employment. This rule is necessary to comply with these statutory requirements.

Section 1. Attendance; Hours of Work. The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes. The normal work day shall be from 8:00 a.m. to 4:30 p.m., local time, Monday through Friday. Employees in other than Frankfort state office buildings shall be subject to such hours of work as set by the appointing authority.

Section 2. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary and emergency employees, shall accumulate annual leave with pay at the following rate:

Months [Years] of Service	Annual Leave Days
0-60 months [0-5 years]	1 leave day per month; 12 per year
61-120 months [5-10 years]	1 1/4 leave days per month; 15 per year
121-180 months [10-15 years]	1 1/2 leave days per month; 18 per year
181 months and over [15 years and over]	1 3/4 leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing years of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted. In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. Employees serving on a part-time basis who work at least 100 hours a month shall be allowed annual leave with pay at the following rate:

Months [Years] of Service	Annual Leave Days
0-60 months [0-5 years]	1 leave day per month; 12 per year
61-120 months [5-10 years]	1 1/4 leave days per month; 15 per year
121-180 months [10-15 years]	1 1/2 leave days per month; 18 per year
181 months and over [15 years and over]	1 3/4 leave days per month; 21 per year

Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service. Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.

(2) Annual leave for full-time employees may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months [Years] of Service	Maximum Amount
0-59 months [0-5 years]	Thirty (30) work days
60-119 months [5-10 years]	Thirty-seven (37) work days
120-179 months [10-15 years]	Forty-five (45) work days
180-239 months [15-20 years]	Fifty-two (52) work days
240 months and over [Over 20 years]	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months [Years] of Service	Maximum Amount
0-59 months [0-5 years]	Thirty (30) work days
60-119 months [5-10 years]	Thirty-seven (37) work days
120-179 months [10-15 years]	Forty-five (45) work days
180-239 months [15-20 years]	Fifty-two (52) work days
240 months and over [Over 20 years]	Sixty (60) work days

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year [may not be carried forward from one (1) calendar year to the next calendar year after June 30, 1984]. Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to

sick leave [carried forward] shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (1/2) hours.

Section 3. Sick Leave. (1) Each employee in the state service, except emergency or per diem employees, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a

similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the rules pertaining to lay-off apply. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be terminated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (1/2) hours.

(9) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with a subpoena by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 5. Compensatory Leave and Overtime. (1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normally prescribed hours of duty only when such work is expressly authorized by the appointing authority or his designee.

(3) Accumulated compensatory time shall be granted by the appointing authority or his designee in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid in a lump sum for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, re-employed or probationally appointed and who were not paid for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) When an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority or his designee shall direct the employee, in writing, to take accumulated compensatory leave time off from work.

(8) Employees [who were previously covered by

the application of the state wage and hour law and who would be covered by the state wage and hour law if that law were still applicable to state employees] shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) An employee [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normally prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) Subject to the provisions of the Fair Labor Standards Act, and KRS 337.050 an employee deemed to be "non-exempt" [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week. Such payments must be authorized and receive the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:051. [, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment.] Compensatory leave used during the same workweek it is earned [and used during the same workweek] does not constitute "hours worked" for computing overtime pay.

(c) An employee deemed to be "non-exempt" under the provisions of the Fair Labor Standards Act [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] who have accumulated at least 151 hours of compensatory leave but has not accumulated [before accumulating] 200 hours[, the employee] may request in writing that he be paid for fifty (50) hours at his regular hourly rate of pay. The employee's leave balance shall be reduced accordingly.

[(d) An employee in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is authorized by the appointing authority and when such payments has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:051.]

Section 6. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(1) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

(2) When an employee has given notice of his availability to resume his duties and the notice is within ninety (90) days after he is relieved from military duty or from hospitalization or treatment continuing after discharge for a period of not more than one (1) year, the appointing authority shall return the employee to his former position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(a) If the employee is physically qualified to perform the duties of his former position, he shall be restored to such position if it exists and is not held by an employee with greater seniority, otherwise to a position of like seniority, status and pay.

(b) If the employee is not qualified to perform the duties of his former position by reason of disability sustained during such military service, he shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status, and pay or the nearest approximation consistent with the circumstances of his case.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who do not request time off to vote or who are not scheduled to work during voting hours shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the Commissioner of Personnel, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months for the following purposes, with or without pay: for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for purposes other than above that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the Commissioner of Personnel, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes

other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the Commissioner of Personnel, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

Section 10. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, [in promotions,] in determining the order of layoff, in re-employment, and as a means of identifying employees who should be promoted, demoted, or dismissed.

Section 11. Records and Reports. (1) Personnel action forms. The Commissioner of Personnel shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The Commissioner of Personnel shall inform the appointing authorities which personnel actions and status changes must be reported to him.

(2) Leave records. The Commissioner of Personnel shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay.

(3) Official roster. The Commissioner of Personnel shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave and compensatory leave.

Section 12. Confidentiality of Records. All records of the department and the Personnel Board shall be public records and open to public inspection as provided in KRS 61.870 to 61.884.

Section 13. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the Commissioner of Personnel. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the Commissioner of Personnel.

Section 14. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, rules and regulations.

Section 15. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these regulations is seventy (70).

(2) An agency may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the Commissioner of Personnel. Applicants so approved shall be certified only to those agencies requesting such waivers.

Section 16. Retirement. (1) The normal retirement age for employees subject to these rules and regulations and regulations shall be seventy (70).

(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the Commissioner of Personnel when it serves the public interest. Such requests must be justified in writing by the appointing authority.

Section 17. Restoration from Military Leave. (1) State appointing authorities shall comply with the provisions of KRS 61.371, 61.373, 61.375, 61.377, 61.379.

(2) The Department of Personnel shall require proper compliance with these statutes as they pertain to state employees.

(3) The appointing authorities for employees in county, city, or political subdivisions thereof are responsible for compliance with these statutes, in keeping with normal personnel practices and procedures of each.

(4) Appeals may be filed by an employee or previous employee pursuant to 101 KAR 1:130. The governmental agency from which the appeal is filed shall bear the expense of the hearing of the appeal.

(5) A former employee seeking restoration, who has been rejected or otherwise penalized, must file an appeal within thirty (30) days, after notification of such rejection or penalization by an appointing authority.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Thursday, November 21, 1985 at 8:30 a.m. Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1985 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, 373 Capitol Annex, Frankfort, Kentucky.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne E. Keating
(1) Type and number of entities affected: All state employees and all state agencies covered by KRS Chapter 18A and Title 101.
(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: No additional requirements.
(2) Effects on the promulgating administrative body: No costs or savings.
(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: Leave will be calculated by new guidelines.
(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: a) The changes in the regulations on compensatory leave and overtime reflect the holding in the recent Supreme Court decision, Garcia v. San Antonio Transit Authority. All compensatory leave and overtime must be authorized in advance, therefore, no additional costs will necessarily be incurred.
b) Annual leave beyond the maximum must be used up by an employee by December 31 or will be converted to sick leave. This creates no additional cost or savings to the state.
c) Crediting leave by the 1st day of the following month is for administrative convenience and consistency; any savings will be due to this consistent approach.

Tiering:
Was tiering applied? No. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 1:200. Rules for unclassified service.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service persons in positions enumerated in KRS 18A.155(1)(f), (g), (h), (i), (j), (o), (t), and (u). KRS 18A.155 further provides that these rules shall be approved by the Governor and promulgated according to KRS Chapters 12 and 13. In practice, the rules which apply to Merit System employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary and emergency employees, shall accumulate annual leave with pay at the following rate:

Months [Years] of Service	Annual Leave Days
0-60 months [0-5 years]	1 leave day per month; 12 per year
61-120 months [5-10 years]	1 1/4 leave days per month; 15 per year
121-180 months [10-15 years]	1 1/2 leave days per month; 18 per year
181 months and over [15 years and over]	1 3/4 leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which leave is earned. In computing years of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted. In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. Employees serving on a part-time basis who work more than 100 hours a month shall be allowed annual leave with pay at the following rate:

Months [Years] of Service	Annual Leave Days
0-60 months [0-5 years]	1 leave day per month; 12 per year
61-120 months [5-10 years]	1 1/4 leave days per month; 15 per year
121-180 months [10-15 years]	1 1/2 leave days per month; 18 per year
181 months and over [15 years and over]	1 3/4 leave days per month; 21 per year

Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service. Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.
(2) Annual leave for full-time employees may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months [Years] of Service	Maximum Amount
0-59 months [0-5 years]	Thirty (30) work days
60-119 months [5-10 years]	Thirty-seven (37) work days
120-179 months [10-15 years]	Forty-five (45) work days
180-239 months [15-20 years]	Fifty-two (52) work days
240 months and over [Over 20 years]	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months [Years] of Service	Maximum Amount
0-59 months [0-5 years]	Thirty (30) work days
60-119 months [5-10 years]	Thirty-seven (37) work days
120-179 months [10-15 years]	Forty-five (45) work days
180-239 months [15-20 years]	Fifty-two (52) work days
240 months and over [Over 20 years]	Sixty (60) work days

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year [may not be carried forward from one (1) calendar year to the next calendar year after June 30, 1984]. Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave [carried forward] shall be computed as provided in subsection(1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts as forth in Section 1(2) of this regulation.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (1/2) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency or per diem employee, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the

employee worked at least 100 hours shall be used. In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be terminated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (1/2) hours.

(9) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with subpoena by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave <u>and Overtime</u>. (1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis<u>, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws</u>. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normally prescribed hours of duty only when such work is <u>expressly</u> authorized by the appointing authority <u>or his designee</u>.

(3) Accumulated compensatory time shall be granted by the appointing authority or his designee in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid in a lump sum for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, or re-employed, [or probationally appointed] and who were not paid for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) Employees [who were previously covered by the application of the state wage and hour law and who would be covered by the state wage and hour law if that law were still applicable to state employees] shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) An employee [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normally prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) Subject to the provisions of the Fair Labor Standards Act and KRS 337.050, an employee deemed to be "non-exempt" [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week. Such payments must be authorized and receive the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:051. [, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment.] Compensatory leave used during the same workweek it is earned [and used during the same workweek] does not constitute "hours worked" for computing overtime pay.

(c) An employee deemed to be "non-exempt" under the provisions of the Fair Labor Standards Act [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] who has accumulated at least 151 hours of compensatory leave but has not accumulated [before accumulating] 200 hours[, the employee] may request in writing that he be paid for fifty (50) hours at his regular hourly rate of pay. The employee's leave balance shall be reduced accordingly.

(d) When an employee deemed to be non-exempt under the provisions of the Fair Labor Standards Act [in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees] has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority or his designee shall direct the employee in writing to take accumulated compensatory leave time off from work, and reduce his leave balance accordingly.

[(e) An employee in a classification that would be covered by the state wage and hour law if that law were still applicable to state employees shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority and when such payment has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:051.]

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(1) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

(2) When an employee has given notice of his availability to resume his duties and the notice is within ninety (90) days after he is relieved from military duty or from hospitalization or treatment continuing after discharge for a period of not more than one (1) year, the appointing authority shall return the employee to his former position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(a) If the employee is physically qualified to perform the duties of his former position, he shall be restored to such position if it exists and is not held by an employee with greater seniority; otherwise, to a position of like seniority, status and pay.

(b) If the employee is not qualified to

perform the duties of his former position by reason of disability sustained during such military service, he shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status and pay or the nearest approximation consistent with the circumstances of his case.

Section 6. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who [do not request time off to vote or] who are not scheduled to work during voting hours shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work shall be granted compensatory leave on an hour-for-hour basis.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the Commissioner of Personnel, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months for the following purposes, with or without pay: for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for purposes other than above that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the Commissioner of Personnel, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the Commissioner of Personnel, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

Section 9. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, in promotions, and as a means of identifying employees who should be promoted, demoted, or dismissed.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Thursday, November 21, 1985 at 8:30 a.m. Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1985 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373 Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne E. Keating
(1) Type and number of entities affected: All state employees and all state agencies covered by KRS Chapter 18A and Title 101.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: No costs or savings.
(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: Leave will be calculated by new guidelines.
(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: a) The changes in the regulations on compensatory leave and overtime reflect the holding in the recent Supreme Court decision, Garcia v. San Antonio Transit Authority. All compensatory leave and overtime must be authorized in advance, therefore, no additional costs will necessarily be incurred.
b) Annual leave beyond the maximum must be used up by an employee by December 31 or will be converted to sick leave. This creates no additional cost or savings to the state.
c) Crediting leave by the 1st day of the following month is for administrative convenience and consistency; any savings will be due to this consistent approach.

Tiering:
Was tiering applied? No. The changes have a minimal effect on policies and procedures.

FINANCE AND ADMINISTRATION CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:035. Application to take examination.

RELATES TO: KRS 325.261, 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 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 in the case of a new applicant. On re-examination the fee is twenty (20) dollars each for Theory of Accounts, Auditing and Business Law and forty (40) dollars 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. Effective January 1, 1986, persons who expect to meet the educational requirement of KRS 325.265(1)(a) within ninety (90) days following the examination shall be eligible for admission. In the case of any candidate admitted to the examination on the expectation that he will complete his education requirement and receive his baccalaureate degree in the time period specified, no grades shall be released nor shall credit for the examination or any part of it be granted until the applicant provides the board with evidence of completion of the educational requirement. Evidence of completion shall be a final official transcript filed with the board within the ninety (90) day period specified. Applications for admission to the examination as a provisional candidate shall include a transcript of college work completed and an official statement from the applicant's college or university that the applicant is expected to complete, within the period of ninety (90) days after the examination for which application is made, the required course of study leading to the awarding of a baccalaureate degree with a major or concentration in accounting.

Section 3. [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: September 20, 1985
FILED WITH LRC: September 30, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, November 25, 1985 at 10 a.m. 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 November 18, 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: Approximately 100 college seniors annually who would otherwise have to wait until six months after graduation to sit for the CPA examination.
(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): Complete transcripts must be filed within ninety days following the examination for which application is made.
(b) Reporting and paperwork requirements: Persons applying for admission under this provisional candidate amendment will be required to secure a statement from the college or university as part of the application process for admission to the exam.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Negligible
2. Continuing costs or savings: Negligible
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: The amendment will marginally increase the correspondence with exam applicants.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave the situation as is which deprives college seniors in their last semester an opportunity to take the CPA exam.
(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: N/A

Tiering:
Was tiering applied? No. Amended regulation will be applied equally to all applicants for the Uniform CPA Examination.

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 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 equivalent to the minimum standards required by the American Council on Pharmaceutical Education for the accreditation of such programs. The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, July, 1984, effective January 1, 1985; and the American Council on Pharmaceutical Education, "College and Schools of Pharmacy, Accredited Professional Degree Programs," July 1, 1985 [1984] are incorporated by reference.

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: September 11, 1985
FILED WITH LRC: September 25, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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, Executive Director
(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
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:125. Drug products in aerosol-nebulizer delivery systems.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products in aerosol-nebulizer delivery systems.

Section 1. The following are determined to be non-interchangeable: Drug products in aerosol-nebulizer delivery systems - applies to drug solutions or powders that are a component of or are only compatible with a specific drug delivery system. There may be significant differences in the dose of a drug and particle size delivered by different products. Such products are not regarded as pharmaceutically equivalent. Approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: September 11, 1985
FILED WITH LRC: September 25, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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, Executive Director
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: To allow interchange of drug products which the Food and Drug Administration considers therapeutically equivalent as cited in the publication "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations."

Tiering:
Was tiering applied? No. N/A.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:135. Drug products with bioinequivalence problems.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a nonequivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products with active ingredient and/or dosage forms with bioinequivalence problems.

Section 1. The following are determined to be non-interchangeable:

Drug Products With Active Ingredient and/or Dosage Forms With Bioinequivalence Problems.

Levodopa--Oral; Capsule; Tablet
Propylthiouracil--Oral; Tablet
Theophylline--Oral; Tablet; Capsule
Warfarin Sodium--Oral; Tablet
Phenytoin Sodium--Oral; Capsule

Approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: September 11, 1985
FILED WITH LRC: September 25, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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, Executive Director
(1) Type and number of entities affected: All consumers for whom these drug products may be prescribed.
(a) Direct and indirect costs or savings to those affected: Savings could not be determined.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. N/A.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:140. Drug products having drug standard deficiencies.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited

"Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products having drug standard deficiencies.

Section 1. The following are determined to be non-interchangeable:
Drug products having drug standard deficiencies - if the drug standards for an active ingredient in a particular dosage form are found to be deficient so as to prevent an evaluation, all drug products containing that active ingredient in that dosage form are considered non-interchangeable.

Estrogens, conjugated - oral; tablet
Estrogens, conjugated; meprobamate - oral; tablet
Estrogens; esterified - oral; tablet.

Approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: September 11, 1985
FILED WITH LRC: September 25, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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, Executive Director
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: To allow interchange of drug products which the Food and Drug Administration considers therapeutically equivalent as cited in the publication "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations."

Tiering:
Was tiering applied? No. N/A.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:155. Suppositories and enemas for systemic use.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists suppositories and enemas for systemic use.

Section 1. The following are determined to be non-interchangeable: Suppositories and enemas for systemic use - the absorption of active ingredients intended to have a systemic effect vary significantly from product to product. Approved drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

RICHARD L. ROSS, Executive Director
APPROVED BY AGENCY: September 11, 1985
FILED WITH LRC: September 25, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on November 21, 1985 at 11 a.m. (EST) at the office of the Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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, Executive Director
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons

why alternatives were rejected: 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: To allow interchange of drug products which the Food and Drug Administration considers therapeutically equivalent as cited in the publication "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations."

Tiering:
Was tiering applied? No. N/A.

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

301 KAR 1:015. Boats and outboard motors; size limits.

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to regulate the size of outboard motors and boats on state-owned lakes to minimize the conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports. This amendment is necessary to increase the motor size on Greenbo Lake [provide regulation of boats and motors on Pan Bowl Lake].

Section 1. No boat will be permitted on any of the herein named lakes with a centerline exceeding eighteen (18) feet six (6) inches in length as measured on deck or from bow to stern, except canoes which have no length limit and float boats which may have pontoons and decking no longer than twenty-two (22) feet. On Lake Malone and Lake Beshear only float boats can have pontoons and decking up to thirty (30) feet in length.

Section 2. No houseboats of any description will be permitted on any of the herein named lakes.

Section 3. No motor of any type is permitted on the following lakes:
(1) Lake Chumley, Lincoln County;
(2) Dennie Gooch Lake, Pulaski County;
(3) Martin County Lake, Martin County; and
(4) Kingdom Come Lake, Harlan County.

Section 4. Electric motors only may be used on the following lakes:
(1) Carter Caves Lake, Carter County;
(2) Spurlington Lake, Taylor County;
(3) Marion County Lake, Marion County;
(4) Elliott County Sportsmen's Lake, Elliott County;
(5) Lake Washburn, Ohio County;
(6) Bert Combs Lake, Clay County;
(7) McNeely Lake, Jefferson County;
(8) Lake Mauzy, Union County;
(9) Carpenter Lake and Kingfisher Lakes, Daviess County;
(10) Metcalfe County Lake, Metcalfe County; and
(11) Briggs Lake, Logan County.

Section 5. Electric motors only may be used on the following lakes located in Ballard County. These lakes are closed 15 October to 15 March, annually:
(1) Big Turner;
(2) Little Turner;
(3) Shelby;
(4) Mitchell;
(5) Happy Hollow;
(6) Burnt Slough; and
(7) Butler.

[Section 6. No motor larger than seven and one-half (7 1/2) hp. may be used on Greenbo Lake located in Greenup County.]

Section 6. [7.] No motor larger than ten (10) hp. (inboard or outboard) may be used on the following state-owned lakes; however, slow speeds which cause no disturbance or interference with fishing must be exercised at:
(1) Shanty Hollow Lake, Warren County;
(2) Bullock Pen Lake, Grant County;
(3) Lake Boltz, Grant County;
(4) Falmouth Lake, Pendleton County;
(5) Elmer Davis Lake, Owen County;
(6) Beaver Creek Lake, Anderson County,
(7) Herb Smith Lake, Harlan County;
(8) Corinth Lake, Grant County; and
(9) Wilgreen Lake, Madison County,
(10) Greenbo Lake, Greenup County.

Section 7. [8.] No boat motor larger than 150 hp. may be used, and all boat motors used must have an underwater exhaust on the following state-owned lakes:
(1) Guist Creek Lake, Shelby County;
(2) Lake Malone, Todd, Muhlenberg and Logan Counties; and
(3) Lake Beshear, Christian and Caldwell Counties.

Section 8. [9.] Boat motors of any size may be used on Pan Bowl Lake, Breathitt County; however, boat speed is limited to idle speed only for the entire lake.

Section 9. [10.] All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this regulation. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

G. WENDELL COMBS, Secretary
DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: September 30, 1985
FILED WITH LRC: September 30, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 26, 1985 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick, Commissioner
(1) Type and number of entities affected: Approximately 3,000 anglers that fish Greenbo Lake.
(a) Direct and indirect costs or savings to those affected: No definable cost.
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 required.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, overlap or duplication is evident.
(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. The amendment itself is not tiered, however, the complete regulation is.

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

301 KAR 1:055. Angling; limits and seasons.

RELATES TO: KRS 150.010, 150.470, 150.990
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: In order to perpetuate and protect the size and well being of fish populations, it is necessary to govern the size and numbers fishermen can harvest. This amendment is necessary to clarify the method for measuring fish [achieve management objectives for Cave Run Lake].

Section 1. The statewide season, creel limits and size limits for taking fish by angling shall be as follows except as specified in Section 2 of this regulation for specific bodies of water:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (large-mouth, smallmouth, Kentucky & Coosa bass)	10	20	12
Rock bass (known as goggle eye or red-eye)	15	30	None
Walleye and their hybrids	10	20	15
Sauger	10	20	None
Muskellunge and their hybrids	2	2	30
Northern pike	5	10	None
Chain pickerel	5	10	None
White bass and yellow bass	60	60	None
Rockfish and their hybrids	5	5	15
Crappie	60	60	None
Trout (all species)	8	8	None

Seasons for all species is year around.

Section 2. The following special limits apply:
(1) The impounded waters of Grayson Lake:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (large-mouth, smallmouth, and Kentucky bass)	10	20	15
Crappie	None	None	None

(2) The impounded waters of Herrington Lake and Dix River and their tributary streams upstream from Dix Dam:

	Daily Creel Limits	Possession Limits	Size Limits Inches
White bass, rock-fish, and their hybrids	20	40	See (a)

(a) No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.
(3) The impounded waters of Taylorsville Lake:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (large-mouth, smallmouth, and Kentucky bass)	10	20	15

(4) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass (large-mouth, smallmouth, and Kentucky bass)	10	20	See (a)

(a) Fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) black bass less than fourteen (14) inches in length.
(5) The impounded waters of Cave Run Lake:

	Daily Creel Limits	Possession Limits	Size Limits Inches
Black bass:	10	20	
Largemouth bass			15
Smallmouth bass			15
Kentucky bass			None

(a) For purposes of identification, any black bass with a patch of teeth on its tongue is considered to be a Kentucky bass.
All other angling limits and seasons apply as set forth in Section 1 of this regulation.

Section 3. Measure all fish from the terminal end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. [All fish must be measured from the terminal end of the lower jaw to the tip of the longest tail fin.] All fish caught that are smaller than those prescribed minimum lengths must be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above named fish while in the field and before he has completed fishing for the day.

G. WENDELL COMBS, Secretary
DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: September 30, 1985
FILED WITH LRC: September 30, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 27, 1985 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick, Commissioner
(1) Type and number of entities affected: Approximately one million anglers that fish Kentucky waters.
(a) Direct and indirect costs or savings to those affected: No definable costs are involved.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No significant cost or savings will occur.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, overlap or duplication is evident.
(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 amendment itself is not tiered, however, the complete regulation is.

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

301 KAR 1:145. Gear allowed for commercial fishing.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the limitations and susceptibilities of the gear will permit the harvesting of the proper size and species of fishes, and so that the sport harvest is not affected and the fishery resources perpetuation is assured. This amendment is necessary to increase the length of the hoop net wing and lead [remove the restrictions on the type of material used in the construction of slat trap baskets].

Section 1. The following gear is the only commercial gear that can be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen.

Section 2. Legal Commercial Gear. (1) All lines and mesh must be made of linen, cotton, or flexible synthetic fiber only.
(2) All mesh is measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.
(3) The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, sections (5), (6), (7), and (8).
(4) Gear:
(a) Hoop net, wing net, straight lead net, heart lead net:
1. Must have a minimum mesh size of three (3) inches, except in the Ohio and Mississippi Rivers and those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum mesh size shall be one (1) inch.
2. Hoops may be any size or shape or material.
3. Maximum length of the lead or wing is sixty (60) [thirty (30)] feet.
4. One (1) commercial gear tag must be attached to the first hoop of each net.
(b) Gill net or trammel net:

1. Are legal gear in Ohio and Mississippi Rivers and overflow lakes directly connected with each river. Minimum mesh size is three (3) inches in the Mississippi and overflow lakes and four (4) inches in the Ohio River and its overflow lakes. Gill and trammel nets may also be authorized for other waters under certain conditions by separate regulations.
2. May be fished weighted or as a flag net.
3. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.
(c) Commercial trotline:
1. Must have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.
2. Must have one (1) commercial gear tag attached.
3. A commercial trotline may be no longer than 3,000 feet, including staging, and must be fished separately, not tied together in a continuous line.
(d) Seine:
1. Must have a minimum mesh size of two (2) inches.
2. Must have both float and lead lines.
3. Must have wood, fiberglass or metal poles or brails attached at each end.
4. When seine is in the water, it must be attended by persons pulling the seine through the water for the entrapment of fish.
5. At no time may a seine be left unattended to act as a set net or other purpose.
6. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.
(e) Slat trap basket:
1. No wire or other mesh may be added to any part of trap.
2. There must be at least two (2) openings left between slats no smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap. These openings may not be restricted by cross-bracings to a length shorter than eight (8) inches.
3. The trap may be no larger than two (2) feet in diameter or square end measure.
4. Must have one (1) commercial gear tag attached to opening ring or square.

G. WENDELL COMBS, Secretary
DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: September 30, 1985
FILED WITH LRC: September 30, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 21, 1985 at 2 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick, Commissioner
(1) Type and number of entities affected: Approximately 1,000 commercial fishermen.
(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:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. The amendment is not tiered, however the complete regulation is.

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

401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 224.033(17)
NECESSITY AND FUNCTION: This regulation provides definitions and administrative procedures authorized for the issuance of permits for the [embodies requirements needed to effectuate KRS Chapter 224, permit authority for sewage systems. The regulation requires a permit prior to] construction and operation of [a] sewage systems authorized under KRS Chapter 224 [and sets forth requirements for receiving a permit to construct and operate such a system]. The regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.

Section 1. Definitions. (1) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.
(2) [(1)] "Cabinet," means the Natural Resources and Environmental Protection Cabinet.
(3) [(2)] "Division" means the Division of Water.
(4) [(3)] "Establishment" means any industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, oil refinery, boat, vessel or other type of commercial, manufacturing or industrial works or facility in the operation of which sewage, industrial wastes or other wastes are produced or stored.
(5) [(4)] "Facility" for the purpose of this regulation means a sewage system as defined in KRS 224.005(20) except for septic tanks, pretreatment facilities, and disposal wells as defined in 401 KAR 5:090 [224.005(15)].

(6) [(5)] "Industrial wastes" means any liquid, or other waste resulting from any process of industry, manufacture, trade or business, or from the depletion of any natural resource.

(7) "Intermediate facility" means a facility with an average daily design flow of 10,000 to 49,999 gallons per day.

(8) "Large facility" means a facility with an average daily design flow of 50,000 gallons per day or more.

(9) [(6)] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(10) [(7)] "Permit" means permission in whatever form by the cabinet to construct and operate a facility.

(11) [(8)] "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(12) "Publicly owned treatment works" for the purpose of this regulation means treatment facilities eligible for funding under United States Environmental Protection Agency's 205(g) (33 U.S.C. Section 1285(g)) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(13) [(9)] "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm or other water, as may be present.

(14) "Small facility" means a facility with an average daily design flow less than 10,000 gallons per day.

Section 2. Applicability. [Prohibition.] No person shall construct, modify or operate a facility without having received a permit from the cabinet. However, the cabinet may exempt from the provisions of this regulation any facility which it determines will not at any time discharge into waters of the Commonwealth. In addition, the operational permit provisions of this regulation will be deemed met by those facilities which have a valid KPDES permit as defined in 401 KAR 5:050.

Section 3. The Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained prior to any construction.

(2) A permit to construct a facility shall automatically become an operational permit when:

(a) The applicant notifies the cabinet that the facility has been properly constructed; and,

(b) A cabinet representative inspects the site and determines that the facility is properly operating.

(3) The applicant shall notify the cabinet in writing within thirty (30) days of completed construction and commencement of trial operation.

(4) Permits may contain special conditions not found in this regulation. Such conditions shall be in writing and treated as a part of a permit.

(5) Issuance of a permit represents a judgment of the cabinet that a proposed facility will protect water quality or achieve certain effluent reductions if constructed in accordance with approved plans and specifications. Construction shall be in accord with approved plans and specifications.

Section 4. Permit Application. An application for a permit shall be submitted not less than thirty (30) days prior to the date a permit is desired.

Section 5. The Application; Preliminary Considerations. (1) Where a river basin plan, an areawide waste management plan and/or a regional or facility plan has been developed, the applicant shall provide the cabinet with a statement from the agency developing any such plan, that the applicant's proposed facility is compatible with any applicable plan.

(2) Any proposed large facility [with a projected capacity of 50,000 gallons per day, or more,] shall submit a preliminary or facilities plan to the cabinet. Said plan shall include:

(a) A seven and one-half (7 1/2) minute, United States Geological Survey topographic map with the projected service area outlined and the discharge point identified thereon.

(b) A schematic of the facility layout and detailed explanation of the proposed facility and its method of operation;

(c) All wastes shall be identified in regard to the processes giving rise to the waste, the character and quantity of the waste, its treatability; and

(d) A statement regarding the expected degree of reduction in pollution load to be accomplished by the facility.

(3) Where the discharge point of a proposed facility fails to coincide with an intermittent or perennial stream as indicated by a blue line on U.S. Geological Survey topographic maps [a well defined wet weather stream], the applicant shall demonstrate that he has a legal right to discharge his effluent across any other land owner's property [servient estate] which comes between the point of discharge and a blue line [well defined wet weather] stream. The cabinet may require the applicant to provide it with an opinion of counsel to that effect.

Section 6. Plans and Specifications. (1) Not [No less] fewer than three (3) sets of detailed plans and specifications shall be submitted to the cabinet. The [Said] submittal shall be accompanied by a completed permit application form provided by the cabinet.

(2) The cabinet may request such additional information as it needs to evaluate the facility.

(3) Once cabinet approval is obtained, no changes shall be made to the plans and specifications which would alter or affect the location, type of process or quality of effluent without prior written approval from the cabinet.

(4) Where a proposed or existing facility is part of or may become a part of a comprehensive sewer system and has a projected capacity of 50,000 gallons per day or more, the plans and specifications shall be prepared by a professional engineer. The plans shall be accompanied by such engineering calculations as are necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1) Specific

design criteria for any facility shall be controlled by current engineering practice. Some references to current engineering practice can be found in the following: "Guidelines for Design, Operation and Maintenance of Waste Water Treatment" by the United States Environmental Protection Agency; [, and by] the latest edition of "Recommended Standards for Sewage Works of the Great Lake-Upper Mississippi River Board of Sanitary Engineers," and the Water Pollution Control Federation's "Manual of Practice No. 8 and 9."

(2) Consideration should be given to the treatment requirements of the United States Environmental Protection Agency for specific types of facilities and processes.

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Protect those minimum conditions applicable to all waters of the Commonwealth found in Section 2 of 401 KAR 5:031 [5:025].

(b) Not cause those waters classified by 401 KAR 5:035 to be of lesser quality than the numeric criteria applicable to those waters in Section 3 to 9 of 401 KAR 5:031 [5:025]; and

(c) Be in accord with any general or particular facility requirement mandated by other regulations. An example of a general facility requirement is the "best practicable control technology" found in 401 KAR 5:080 [5:035].

(4) A recording flow-measuring device shall be installed at each large facility [any facility with a design flow of 50,000 gallons per day, or more]. Any facility [Plants with less capacity] may estimate flow from a measuring device at the plant.

(5) Infiltration/Exfiltration:

(a) The entrance [access] of ground water into or loss of waste from a sewer system shall [will] be limited to 250 gallons per inch of diameter per mile per day with a maximum of 6,000 gallons per mile per day regardless of the pipe diameter. This limitation is inclusive of manholes, sewers, and appurtenances.

(b) The integrity of a new system shall be verified by means of either smoke testing or low pressure air testing or both testing methods. The use of smoke testing shall depend on prevailing ground water conditions at the time of testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method and/or smoke testing if ground water conditions permit.

(6) Inflow: No new combined, extension or replacement of combined sewers shall be permitted. All points of entrance [access] of inflow to a separate sanitary system will be identified and eliminated.

Section 8. Application; Other Supporting Documents. (1) The applicant shall demonstrate that provision has been made for continuous inspection of a facility under construction to assure its conformity with approved plans and specifications. Those facilities designed by an engineer shall be inspected by an engineer.

(2) The applicant shall demonstrate that laboratory services shall be provided for self-monitoring to assure facility operation in accord with any permit conditions and to substantiate protection of the receiving waters.

(3) Where a proposed facility will serve multiple users, the applicant shall demonstrate the financial ability to guarantee continuous operation and maintenance to the cabinet's satisfaction. Such guarantee may take the form of a supporting promise by another person to operate the facility if the applicant fails to properly do so, or by posting a bond payable or depositing money in escrow to be available for making necessary repairs only upon the cabinet's determination that the facility's operation and maintenance is not achieving permit conditions. The above requirement can be demonstrated by a certification from the Public Service Commission.

Section 9. Operation. (1) The cabinet's permit may specify the type of analysis required for a facility and the frequency that such analysis shall be performed and reported to the cabinet.

(2) The cabinet may provide forms for self-monitoring reports.

[(3) Facilities having a design capacity of 50,000 gallons per day or more shall submit an annual report which shall include:]

[(a) A summary of the quantity and quality of waste influent and effluent for each month, for each parameter, with average, minimum and maximum values shown;]

[(b) A report of the number of times the facility bypassed; and]

[(c) A report of what percent of the time the minimum treatment conditions were not met.]

Section 10. Fees. (1) The applicant shall submit a permit fee as provided in subsection (5) of this section with the construction permit application.

(2) Should the cabinet deny a construction permit, the fee for the construction permit will be refunded.

(3) Checks or money orders shall be made payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule:

Facility Category	Construction Permit Fee
Large Facility	$1,000
Intermediate Facility	$ 500
Small Facility	$ 250

(5) Fees in this section do not apply to publicly owned treatment works or agricultural wastes handling systems designed by the U.S. Soil Conservation Service (SCS) in accordance with the cabinet's May 15, 1980 memorandum of understanding with SCS, incorporated herein by reference.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at noon.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m., in the Capital Plaza Tower. Any person interested in attending this hearing shall submit by November 16, 1985, a written statement of such interest to: A. Leon Smothers, Assistant Director, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601. If no statement of interest is received by close of business November 16, 1985, the hearing on this regulation may be cancelled. Written comments may also be submitted to the address above. Written comments will be accepted until the end of the comment period, which will be close of business on November 21, 1985.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: A. Leon Smothers
(1) Type and number of entities affected: The proposed amendment establishes fees for construction permits for wastewater treatment works. The proposed amendment also makes technical additions to Section 1. Entities affected are municipalities, industries, and individuals constructing or seeking to construct a sewage system as defined by KRS 224.005; these entities number 1,238.
(a) Direct and indirect costs or savings to those affected:
1. First year: Costs for construction permits will be assessed according to the table in Section 10.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The implementation of a fee schedule for wastewater treatment works construction permits is expected to offset a portion of the costs of processing permit applications.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements will result from the processing of receipts to the Kentucky State Treasury.
(3) Assessment of anticipated effect on state and local revenues: The establishment of a fee schedule for construction permits is expected to have a positive impact on state revenue by offsetting part of the cost of processing said permits.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to establishing a construction permit fee schedule are (1) no action (continued General Fund Support at current levels) and (2) terminating the construction permit program. The no action option was rejected in favor of the proposed amendment which establishes a mechanism to both recover a portion of permit processing costs and help encourage small establishments to construct wastewater treatment works. Administration of the construction permit program is required by state law; thus, program termination is not possible. The proposed technical corrections can only be made by amending the existing regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: 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? Yes.

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

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

RELATES TO: KRS 224.005, 224.020, 224.033, 224.034, 224.060 [Chapter 224]
PURSUANT TO: KRS 224.033, 224.045 [13.082, 224.005, 224.020, 224.033(19), (21), (22), (23), 224.034, 224.060]
NECESSITY AND FUNCTION: KRS Chapter 224 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into the waters of the Commonwealth. KRS 224.034 empowers the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.). Permits issued pursuant to KRS 224.034 shall be referred to as KPDES permits. This regulation defines essential terms used in connection with the following KPDES regulations: 401 KAR 5:050; 401 KAR 5:055; 401 KAR 5:060; 401 KAR 5:065; 401 KAR 5:070; 401 KAR 5:075; 401 KAR 5:080; and 401 KAR 5:085.

Section 1. Definitions. Whenever used in the KPDES regulations, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these regulations, the following terms have the meaning as set forth herein. Terms not further defined in this section have the meaning given by KRS 224.005 and regulations promulgated pursuant thereto.
(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.
(2) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.
(3) "Application" means the forms approved by the cabinet, which are equivalent to the EPA standard NPDES forms for applying for a KPDES permit, including any additions, revisions or modifications to the forms.
(4) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
(5) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.
(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs

also includes treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

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

(10) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 U.S.C. Section 1342).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for

which it does not have a permit.

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

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

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

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

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

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

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

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

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

(b) Sewage from vessels; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "BOD" means biochemical oxygen demand;

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

(5) "BMPs" means best management practices;

(6) "COD" means chemical oxygen demand;

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

(8) "DMR" means discharge monitoring report;

(9) "KAR" means Kentucky Administrative Regulation;

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

(11) "KRS" means Kentucky Revised Statutes;

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

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

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

(15) "TSS" means total suspended solids.

(16) "U.S.C." means United States Code.

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

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at noon.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m., in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request or the written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment makes technical corrections to Section 1. In addition, because KPDES became effective on September 30, 1983, Section 6 is deleted at the request of the Counsel of the Administrative Regulation Review Subcommittee. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The technical corrections and deletion have no effect on those entities.

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

1. First year: None

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation. No other alternative is feasible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. The proposed amendment makes technical corrections. Thus tiering is inappropriate for these corrections. The proposed amendment deletes Section 6. The deletion does not affect KPDES permit holders.

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

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

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.994 [Chapter 224]
PURSUANT TO: KRS 224.033, 224.045 [13.082,224.033(19), (21), (22), (23), 224.034, 224.060, 224.994(1), (4)]
NECESSITY AND FUNCTION: KRS 224.033[(21)] provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by regulation, technological levels of treatment and effluent limitations. KRS 224.034(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d), KRS 224.034(1) requires that any exemptions granted in the issuance of such permits shall be pursuant to 33 U.S.C. Sections 1311, 1312, and 1326(a). Further, KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this regulation any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, and requirements for disposal into wells, into POTWS and by land application.

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

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

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Discharges from separate storm sewers; and

(e) Silviculture point sources.

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

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

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

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

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 33 [40] CFR Part 151 [1510] (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Part 153 [.10(e)] (Pollution by Oil and Hazardous Substances) or discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.877[(5)].

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

(f) Return flows from irrigated agriculture.

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

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

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

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

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

(3) When the imposition of conditions cannot

ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

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

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

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

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

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

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

Section 3. Variance Requests by Non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this section:

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

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

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

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

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

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

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

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

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

1. Designated planning areas under CWA Sections 208 and 303 (33 U.S.C. Sections 1288 and 1313);

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or

6. Any other appropriate division or combination of boundaries.

(b) Sources. <u>The general permit may be written to regulate, within the area described in paragraph (a) of this subsection: either:</u>

<u>1. Stormwater point sources; or</u>

<u>2. A category of point sources other than stormwater point sources if the sources all:</u>

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

[1. Separate storm sewers; or]

[2. A category of point sources other than separate storm sewers if the sources all:]

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

b. Discharge the same types of wastes;

c. Require the same effluent limitations or operating conditions;
d. Require the same or similar monitoring; and
e. In the opinion of the director, are more appropriately controlled under a general permit than under individual permits.
(2) Administration.
(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of 401 KAR 5:075.
(b) Requiring an individual permit.
1. The director may require any person authorized by a general permit to apply for and obtain an individual KPDES permit. Any interested person may petition the director to take action under this paragraph. Cases where an individual KPDES permit may be required include the following:
a. The discharger is a significant contributor of pollution as determined by the factors set forth in 401 KAR 5:060, Section 8(3)(b);
b. The discharger is not in compliance with the conditions of the general KPDES permit;
c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
d. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;
e. A Kentucky Water Quality Management Plan containing requirements applicable to such point sources is approved; or
f. The requirements of subsection (1) of this section are not met.
2. Any owner or operator authorized by a general permit may request to the excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.
3. When an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically terminated on the effective date of the individual permit.
4. A permittee, excluded from a general permit solely because he already has an individual permit, may request that the individual permit be revoked. the permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants into Wells, into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.
(2) When part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:
(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.
(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

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

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.
(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:
(a) Control concentrations of pollutants discharged but not mass; or
(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.
(4) Subsection (2) of this section does not alter a discharger's obligation to meet any more stringent requirements established under 401 KAR 5:065.

Section 7. Variances Available to KPDES Applicants. Consistent with KRS 224.034(1), the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, lists, inclusively, those variances available to KPDES applicants.
(1) Economic capability. The director, with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the director that the modified requirement will:
(a) Represent the maximum use of technology within the economic capability of the owner or operator; and
(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.
(2) Environmental considerations.
(a) The director, with the concurrence of EPA, may modify the BAT requirement set out in 401

KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401 KAR 5:080, Section 5, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the director that:

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

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

3. The modification will not:

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

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

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

(3) Innovative technology.

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

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

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

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

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

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

(4) Thermal pollution.

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

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

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

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

(3) Application procedure.

(a) Application deadline.

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

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

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

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

1. The name and address of the requester;

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

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

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

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

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

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

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

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

merits of the request.

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

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

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

a. The POTW into which the industrial user discharges;

b. Adjoining states whose waters may be affected; and

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

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

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

(e) Review of requests by state.

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

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

Section 9. Pretreatment. (1) Applicability.

(a) This section applies to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means except as prohibited by this section.

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

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

(4) National pretreatment standards: prohibited discharges.

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

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

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

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

(e) 40 CFR 403.5 is hereby incorporated by reference, revised as of July 1, 1984 [1982], as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) Pretreatment standards: categorical standards.

(a) In addition to the general prohibitions in subsection (4) of this section, all indirect discharges shall comply with national pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Part 401 et seq.). Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

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

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

(d) 40 CFR Chapter I, Subchapter N (Part 401 et seq.), and 40 CFR Section 403.6 are hereby incorporated by reference, revised as of July 1, 1984 [1982], as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 [, Division of Water, Permits Branch, Frankfort, Kentucky].

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

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

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

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

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

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

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

pretreatment standards by a POTW may only be made as follows:

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

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

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

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

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

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

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

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

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

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

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

(ii) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in

sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subclause (iii) of this clause to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

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

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

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

Where:

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

r_c = removal corrected by the overflow factor.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Contents of application to revise discharge limits. Requests for authorization to revise discharge limits in categorical pretreatment standards shall be supported by the following information:

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

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

a. Representative data: seasonal. The data shall be representative of yearly and seasonal

conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

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

c. Sampling procedures: composite.

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

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

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

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

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

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

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

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

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

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

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

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

where:

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

r = POTW's consistent removal rate for that

pollutant as established under paragraphs (a)2, (d)2, and if appropriate, (b)3b(i) of this subsection (percentage expressed as a decimal).

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

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

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

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

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

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

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

(e) Procedure for authorizing modification of standards.

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

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

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

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

(f) Continuation and withdrawal of authorization.

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

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

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

4. Modification or withdrawal of revised limits.

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

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

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

or (f) of this section.

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

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

(7) POTW pretreatment programs: development by POTW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a

discharge source or treatment system is located or in which records are required to be kept under subsection (12) of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under CWA Section 308 (33 U.S.C. Section 1318);

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

h. Pretreatment requirements enforced through the remedies set forth in subparagraph g of this paragraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or this section. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedure to halt or prevent any discharge to the POTW which presents or may present danger to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the director finds to be insufficient; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) Contents of POTW program submission.

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

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

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

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

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

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

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

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

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

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

3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

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

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

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

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

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

(g) Consistency with water quality management plans.

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

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

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

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

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

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

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

designated CWA Section 208 (33 U.S.C. Section 1288) planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

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

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

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

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

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

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

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

(c) Director's decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in paragraph (a) of this subsection, the director will approve or deny the submission based upon the evaluation in paragraph (a) of this subsection and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. When the director makes a determination to deny the request, the director will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

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

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

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

(10) Reporting requirements for POTWs and industrial users.

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

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

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

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

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

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

5. Measurement of pollutants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the industrial user which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a

consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

(e) Periodic reports on continued compliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring

activities required by this section. Such records shall include for all samples:

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

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of the analyses.

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

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

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

(12) Net/gross limitations. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR Section 403.15. 40 CFR Section 403.15 is hereby incorporated by reference, revised as of July 1, 1984 [1982], as published by the Office of the Federal Register, National Archives and Register Service, General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(13) Upset provision.

(a) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

(c) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the specific cause of the upset;

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

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

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

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

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

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

(e) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, cabinet enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review under KRS 224.081(2). Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

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

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

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at noon.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m., in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request of the written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment incorporates changes in 40 CFR Part 122, 49 Fed. Reg. 38046 (September 26,

1984). Those changes modify Section 5. The proposed amendment makes technical corrections to Sections 1, 8, and 9. In addition, because KPDES became effective on September 30, 1983, Section 10 is deleted at the request of the Counsel of the Administrative Regulation Review Subcommittee. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated changes amplify existing requirements for those entities regarding stormwater dischargers.

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

1. First year: For the incorporated changes, the affected entities must meet under NPDES the stated requirements. The proposed amendment simply incorporates in KPDES those changes. The requirements may or may not result in costs or savings. For the technical corrections and the deletions, there are no new costs or savings for the affected entities.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation. No other alternative is feasible.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment's changes to Section 5 modify general permit provisions. Those provisions apply to all KPDES permit holders. The proposed amendment's changes to Sections 1, 8, and 9 are technical corrections. Thus, tiering is inappropriate. The proposed amendment's change to Section 10 deletes that section. The deletion does not affect KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 401 KAR 5:055
SUBJECT/TITLE: Scope and applicability of the KPDES program.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES.
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT: Unit responsible for drainage.
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: The proposed amendment amplifies in Section 5 existing stormwater discharger's provisions. Technical corrections are made to Section 1. Section 10 is deleted.
PROVISION/MECHANICS: The change modifies an existing obligation. This is not applicable to the technical corrections and deletion.
FISCAL EXPLANATION: There is no fiscal impact on local governments.
PREPARER: Timothy Kuryla

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

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060 [Chapter 224]

PURSUANT TO: KRS 224.033, 224.045 [13.082, 224.020, 224.033(19), (21), (22), (23), 224.034, 224.060]

NECESSITY AND FUNCTION: KRS 224.033[(19)] authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

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

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the director as described in this regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR Section 122.6, continuation of expiring permits. For the purpose of this section, the director will accept the information required under subsection (4) of this section, for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who is required to have a permit and who does not have an effective

permit, shall submit a complete application to the director in accordance with this section and 401 KAR 5:075. A complete application shall include a BMP program, if necessary, under 401 KAR 5:065, Section 2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under 401 KAR 5:055, Section 5;

2. Discharges excluded under 401 KAR 5:055, Section 1; and

3. Users of a privately owned treatment works unless the director requires otherwise under 401 KAR 5:065, Section 2(12).

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

(b) Any existing Group I stormwater discharge as defined in Section 8(2)(b) of this regulation that does not have an effective permit shall submit an application by December 31, 1987. Any existing Group II stormwater discharge as defined in Section 8(2)(c) of this regulation that does not have an effective permit shall submit an application by June 30, 1989. Any discharger designated under Section 8(3) of this regulation shall submit an application within six (6) months of notification of its designation.

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

(4) Duty to reapply.

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

(b) Continuation of expiring permits.

1. The conditions of an expired permit continue in force until the effective date of a new permit if:

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

b. [2.] The director, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

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

3. [4.] Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the director may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by the KPDES regulations.

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

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

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

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

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

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

(e) A listing of all other relevant environmental permits, or construction approvals issued by the cabinet or other state or federal permits, as requested.

(f) A topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Group II stormwater discharges, as defined in Section 8 of this regulation, are exempt from the requirements of this paragraph. [A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structure and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the facility property boundary.]

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

(h) For Group II stormwater dischargers (as defined in Section 8 of this regulation) only, a brief narrative description of:

1. The drainage area, including an estimate of the size and nature of the area;

2. The receiving water; and

3. Any treatment applied to the discharge.

(i) [(h)] Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to 401 KAR 5:080, Section 5 [new source regulations promulgated by the cabinet].

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

(8) Service of process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal document [nature] for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action. Service, whether by hand or

by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

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

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

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

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For the purpose of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, Regional Administrators of EPA).

(2) Reports. All reports required by permits, other information requested by the director, and all permit applications submitted for Group II stormwater discharges under Section 8 of this regulation shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if: [All reports required by permits and other information requested by the director shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if the following conditions are met:]

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) [The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility;]

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

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units shall be included in the application. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall show approximate average flows at intake and

discharge points and between units, including treatment units. If a water balance cannot be determined the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. The applicant shall provide a narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, for example, dye-making reactor, distillation tower. For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) Intermittent flows. If any of the discharges described in subsection 3 of this section are intermittent or seasonal, the applicant shall provide a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline shall be included. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates shall be included.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluent, the director may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples must be used. However, a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours, and a minimum of one (1) to four (4) grab samples may be taken for stormwater discharges depending on the duration of the discharge. One (1) grab sample shall be taken in the first hour (or less) of discharge with one (1) additional grab sample taken in each succeeding hour of discharge up to a minimum of four (4) grab samples for discharges lasting four (4) or more hours. In addition, the director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is assumed to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.) [Information on the discharge of pollutants specified in this subsection shall be provided by the applicant. When quantitative data for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluents, the director may allow the applicant to test only one (1) outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative date for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples must be used. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.]

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

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

2. The director may waive the reporting requirements for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in subparagraph 1 of this paragraph if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent

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

(b) Each applicant with processes in one (1) or more primary industry category, listed in Section 10 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

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

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

(c)1. Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in Section 13(4) of this regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged. [Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:]

2. [1.] Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Section 13(2) or (3) of this regulation (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (a)2 of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten (10) ppb or greater, the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, where any of these four (4) pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section is not required to analyze for pollutants listed in Section 13(2) of this regulation (the organic toxic pollutants). [All pollutants listed in Section 13(2) or (3) of this regulation, the toxic pollutants, for which quantitative data is not otherwise required under paragraph (b) of this subsection except that an applicant qualifying as a small business under subsection 8 of this section is not required to analyze for the pollutants listed in Section 13(2) of this regulation, the organic toxic pollutants.]

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

(d) Each applicant shall indicate any knowledge or reason to believe that any of the pollutants in Section 13(5) of this regulation, certain hazardous substances and asbestos is discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for any pollutant.

(e) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

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

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

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the director has adequate information to issue the permit. [The application shall include a listing of any toxic pollutant which the applicant:]

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

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

(10) Stormwater point source exemption.

(a) An applicant that qualifies as a Group II stormwater discharger under Section 8(2) of this regulation is exempt from the requirements of Sections 1(6)(f) and 4 of this regulation, unless the director requests such information.

(b) For the purpose of subsection (3) of this section, stormwater point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of

estimation on which the estimate is based.

(c) The director may require additional information under subsection (14) of this section, and may request any Group II stormwater dischargers to comply with this section.

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

(12) [(11)] Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(13) [(12)] Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be included in the application.

(14) [(13)] Additional information. In addition to the information reported on the application form, applicants shall provide to the director, upon request, other information as the director may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

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

(2) Definitions.

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

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

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

(b) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of the KPDES regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

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

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

(a) The director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process wastewaters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the Commonwealth; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in Section 11 of this regulation will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

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

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

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

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

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

(a) The director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the director will consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants

reaching waters of the Commonwealth; and
4. Other relevant factors.
(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the director or authorized representative has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the KPDES permit program.
(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the director, using the application form provided by the director:
(a) The maximum daily and average monthly flow from each outfall.
(b) The number of ponds, raceways, and similar structures.
(c) The name of the receiving water and the source of intake water.
(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.
(e) The calendar month of maximum feeding and the total mass of food fed during that month.

Section 7. Aquaculture Projects: Specific Application Requirements. (1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the KPDES permit program and in accordance with 401 KAR 5:080, Section 2.
(2) Definitions.
(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.
(b) "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

Section 8. Stormwater Discharges. (1) Permit requirement. Stormwater point sources, as defined in this section, are point sources subject to the KPDES permit program. The director may issue a KPDES permit or permits for discharges into waters of the Commonwealth from a stormwater point source covering all conveyances which are a part of that stormwater discharge. Where there is more than own (1) owner or operator of a single system of such conveyances, any or all discharges into the stormwater discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the Commonwealth. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the director specifies otherwise. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one (1) owner or operator, no discharger into the stormwater discharge may be subject, without its consent, to a permit condition for discharges into the stormwater discharge other than its own discharges into that system. All dischargers into a stormwater discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges. (See Section 1(2)(b) of this regulation for application deadline for existing stormwater point sources.)
(2) Definitions.
(a) "Stormwater point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying stormwater runoff and which:
1. Is located at an urbanized area as designated by the University of Louisville's Urban Studies Center consistent with the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1975);
2. Discharges from lands or facilities used for industrial or commercial activities; or
3. Is designated under subsection (3) of this section. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain KPDES permits, but are not "stormwater point sources."
(b) "Group I stormwater discharge" means any "stormwater point source" which is:
1. Subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;
2. Designated under subsection (3) of this section; or
3. Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.
(c) "Group II stormwater discharge" means any "stormwater point source" not included in paragraph (b) of this subsection. (See Section 4(10) of this regulation for exemption from certain application requirements.)
(d) A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying stormwater runoff which does not constitute a "stormwater point source" under this subsection is not considered a point source subject to the requirements of CWA.
(e) Whether a system of conveyances is or is not a stormwater point source for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.
(3) Case-by-case designation of stormwater discharges. The director may designate a conveyance or system of conveyances primarily used for collecting and conveying stormwater runoff as a stormwater point source. This designation may be made to the extent allowed or required by EPA promulgated effluent limitations guidelines for point sources in the stormwater discharge category or when:
(a) A Kentucky Water Quality Management plan under CWA Section 208 (33 U.S.C. Section 1288) which contains requirements applicable to such

point sources is approved; or

(b) The director determines that a stormwater discharge is a significant contributor of pollution to the waters of the Commonwealth. In making this determination, the director shall consider the following factors:

1. The location of the discharge with respect to waters of the Commonwealth;

2. The size of the discharge;

3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and

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

[(2) Definition and criteria.]

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

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

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

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

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

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

[(3) Case-by-case designation of separate storm sewers. The director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:]

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

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

[1. The location of the discharge with respect to waters of the Commonwealth;]

[2. The size of the discharge;]

[3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and]

[4. Other relevant factors.]

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

(2) Definitions.

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

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

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

Section 10. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES regulations whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants.
(2) Aluminum forming.
(3) Auto and other laundries.
(4) Battery manufacturing.
(5) Coal mining.
(6) Coil coating.
(7) Copper forming.
(8) Electrical and electronic components.
(9) Electroplating.
(10) Explosives manufacturing.
(11) Foundries.
(12) Gum and wood chemicals.
(13) Inorganic chemicals manufacturing.
(14) Iron and steel manufacturing.
(15) Leather tanning and finishing.
(16) Mechanical products manufacturing.
(17) Nonferrous metals manufacturing.
(18) Ore mining.
(19) Organic chemicals manufacturing.
(20) Paint and ink formulation.
(21) Pesticides.
(22) Petroleum refining.
(23) Pharmaceutical preparations.
(24) Photographic equipment and supplies.
(25) Plastics processing.
(26) Plastic and synthetic materials

manufacturing.
(27) Porcelain enameling.
(28) Printing and publishing.
(29) Pulp and paper mills.
(30) Rubber processing.
(31) Soap and detergent manufacturing.
(32) Steam electric power plants.
(33) Textile mills.
(34) Timber products processing.

Section 11. Criteria for Determining a Concentrated Animal Feeding Operation. An animal feeding operation is a concentrated animal feeding operation for purposes of Section 5 of this regulation if either of the following criteria are met:
(1) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:
(a) 1,000 slaughter and feeder cattle;
(b) 700 mature dairy cattle, whether milked or dry cows;
(c) 2,500 swine each weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds;
(d) 500 horses;
(e) 10,000 sheep or lambs;
(f) 55,000 turkeys;
(g) 100,000 laying hens or broilers, if the facility has continuous overflow watering;
(h) 30,000 laying hens or broilers, if the facility has a liquid manure handling system;
(i) 5,000 ducks; or
(j) 1,000 animal units.
(2) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:
(a) 300 slaughter or feeder cattle;
(b) 200 mature dairy cattle, whether milker or dry cows;
(c) 750 swine each weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds;
(d) 150 horses;
(e) 3,000 sheep or lambs;
(f) 16,500 turkeys;
(g) 30,000 laying hens or broilers, if the facility has continuous overflow watering;
(h) 9,000 laying hens or broilers, if the facility has a liquid manure handling system;
(i) 1,500 ducks; or
(j) 300 animal units; and
(k) Either one (1) of the following conditions are met:
1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system or other similar manmade device; or
2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
(3) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in subsections (1) and (2) of this section if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.
(4) Definitions.
(a) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting over twenty-five (25) kilograms (approximately fifty-five (55) pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
(b) "Manmade" means constructed by man and used for the purpose of transporting wastes.

Section 12. Criteria for Determining a Concentrated Aquatic Animal Production Facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of Section 6 of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:
(1) Cold water aquatic animals. (a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:
1. [(a)] Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
2. [(b)] Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
(b) [(c)] Cold water aquatic animals include, but are not limited to the Salmonidae family of the fish; e.g. trout and salmon.
(2) Warm water aquatic animals.
(a) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:
1. [(a)] Closed ponds which discharge only during periods of excess runoff; or
2. [(b)] Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
(b) [(c)] "Warm water aquatic animals" include, but are not limited to, the Ichaluridae, [Ameiuride,] Centrarchidae, and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

Section 13. KPDES Permit Application Testing Requirements. (1) Table I - Testing Requirements for Organic Toxic Pollutants for Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction[1]			
	Vola-tile	Acid	Base/ neutral	Pesti-cide
Adhesives and sealants	(*)	(*)	(*)	-
Aluminum forming	(*)	(*)	(*)	-
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)	-	(*)	-
Coal mining	(*)	(*)	(*)	(*)
Coil coating	(*)	(*)	(*)	-
Cooper forming	(*)	(*)	(*)	-
Electric and electronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	-
Explosives manufacturing	-	(*)	(*)	-
Foundries	(*)	(*)	(*)	-
Gum and wood chemicals	(*)	(*)	(*)	(*)
Inorganic chemicals manufacturing	(*)	(*)	(*)	-

Iron and steel manufacturing	(*)	(*)	(*)	-
Leather tanning and finishing	(*)	(*)	(*)	(*)
Mechanical products manufacturing	(*)	(*)	(*)	-
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining	(*)	(*)	(*)	(*)
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	(*)	(*)	(*)
Pharmaceutical preparations	(*)	(*)	(*)	-
Photographic equipment and supplies	(*)	(*)	(*)	(*)
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)	-	-	-
Porcelain enameling	(*)	-	(*)	(*)
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paper mills	(*)	(*)	(*)	(*)
Rubber processing	(*)	(*)	(*)	-
Soap and detergent manufacturing	(*)	(*)	(*)	-
Steam electric power plants	(*)	(*)	(*)	-
Textile mills	(*)	(*)	(*)	(*)
Timber products processing	(*)	(*)	(*)	(*)

[1]The toxic pollutants in each fraction are listed in Table II.
*Testing required.

(2) Table II - Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS):

(a) Volatiles:

1V acrolein	16V 1,1-dichloroethylene
2V acrylonitrile	17V 1,2-dichlorpropane
3V benzene	18V 1,2-dichloropropylene
4V bis (chloromethyl) ether	19V ethylbenzene
5V bromoform	20V methyl bromide
6V carbon tetrachloride	21V methyl chloride
7V chlorobenzene	22V methylene chloride
8V chlorodibromomethane	23V 1,1,2,2-tetrachloroethane
9V chloroethane	24V tetrachloroethylene
10V 2-chloroethylvinyl ether	25V toluene
11V chloroform	26V 1,2-trans-dichloroethylene
12V dichlorobromomethane	27V 1,1,1-trichloroethane
13V dichlorodifluoromethane	28V 1,1,2-trichloroethane
14V 1,1-dichloroethane	29V trichloroethylene
15V 1,2-dichloroethane	30V trichlorofluoromethane
	31V vinyl chloride

(b) Acid compounds:

1A 2-chlorophenol	6A 2-nitrophenol
2A 2,4-dichlorophenol	7A 4-nitrophenol
3A 2,4-dimethylphenol	8A p-chloro-m-cresol
4A 4,6-dinitro-o-cresol	9A pentachlorophenol
5A 2,4-dinitrophenol	10A phenol
	11A 2,4,6-trichlorophenol

(c) Base/neutral:

1B acenaphthene	24B diethyl phthalate
2B acenaphthylene	25B dimethyl phthalate
3B anthracene	26B di-n-butyl phthalate
4B benzidine	27B 2,4-dinitrotoluene
5B benzo(a)anthracene	28B 2,6-dinitrotoluene
6B benzo(a)pyrene	29B di-n-octyl phthalate
7B 3,4-benzofluoranthene	30B 1,2-diphenylhydrazine (as azobenxene)
8B benzo(ghi)perylene	31B fluoranthene
9B benzo(k)fluoranthene	32B fluorene
10B bis(2-chloroethoxy)methane	33B hexachlorobenzene
11B bis(2-chloroethyl)ether	34B hexachlorobutadiene
12B bis(2-chloroisopropyl)ether	35B hexachlorocyclopentadiene
13B bis(2-ethylhexyl)phthalate	36B hexachloroethane
14B 4-bromophenyl phenyl ether	37B indeno(1,2,3-cd) pyrene
15B butylbenzyl phthalate	38B isophorone
16B 2-chloronaphthalene	39B naphthalene
17B 4-chlorophenyl phenyl ether	40B nitrobenzene
18B chrysene	41B N-nitrosodimethylamine
19B dibenzo(a,h)anthracene	42B N-nitrosodi-n-propylamine
20B 1,2-dichlorobenzene	43B N-nitrosodiphenylamine
21B 1,3-dichlorobenzene	44B phenanthrene
22B 1,4-dichlorobenzene	45B pyrene
23B 3,3-dichlorobenzidine	46B 1,2,4-trichlorobenzene

(d) Pesticides:

1P aldrin	14P endrin
2P a-BHC	15P endrin aldehyde
3P b-BHC	16P heptachlor
4P y-BHC	17P heptachlor epoxide
5P d-BHC	18P PCB-1242
6P chlordane	19P PCB-1254
7P 4,4'-DDT	20P PCB-1221
8P 4,4'-DDE	21P PCB-1232
9P 4,4'-DDD	22P PCB-1248
10P dieldrin	23P PCB-1260
11P a-endosulfan	24P PCB-1016
12P b-endosulfan	25P toxaphene
13P endosulfan sulfate	

(3) Table III - Other Toxic Pollutants: (Metals, Cyanide) and Total Phenols:

(a) antimony, total
(b) arsenic, total
(c) beryllium, total
(d) cadmium, total
(e) chromium, total
(f) copper, total
(g) lead, total
(h) mercury, total
(i) nickel, total
(j) selenium, total
(k) silver, total
(l) thallium, total
(m) zinc, total
(n) cyanide, total
(o) phenols, total

(4) Table IV - Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present:

(a) bromide
(b) chlorine, total residual
(c) color
(d) fecal coliform
(e) fluoride
(f) nitrate-nitrite
(g) nitrogen, total organic
(h) oil and grease
(i) phosphorus, total
(j) radioactivity
(k) sulfate
(l) sulfide
(m) sulfite
(n) surfactants
(o) aluminum, total
(p) barium, total
(q) boron, total
(r) cobalt, total
(s) iron, total
(t) magnesium, total
(u) molybdenum, total
(v) manganese, total
(w) tin, total
(x) titanium, total

(5) Table V - Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present:
(a) Toxic pollutants-asbestos;
(b) Hazardous substance:
1. acetaldehyde
2. allyl alcohol
3. allyl chloride
4. amyl acetate
5. aniline
6. benzonitrile
7. benzyl chloride
8. butyl acetate
9. butylamine
10. captan
11. carbaryl
12. carbofuran
13. carbon disulfide
14. chlorpyrifos
15. coumaphos
16. cresol
17. crotonaldehyde
18. cyclohexane
19. 2,4-D(2,4-dichlorophenoxy acetic acid)
20. diazinon
21. dicamba
22. dichlobenil
23. dichlone
24. 2,2-dichloropropionic acid
25. dichlorvos
26. diethyl amine
27. dimethyl amine
28. dintrobenzene
29. diquat
30. disulfoton
31. diuron
32. epichlorohydrin
33. ethanolamine
34. ethion
35. ethylene diamine
36. ethylene dibromide
37. formaldehyde
38. furfural
39. guthion
40. isoprene
41. isopropanolamine
42. kelthane
43. kepone
44. malathion
45. mercaptodimethur
46. methoxychlor
47. methyl mercaptan
48. methyl methacrylate
49. methyl parathion
50. mevinphos
51. mexacarbate
52. monethyl amine
53. monomethyl amine
54. naled
55. napthenic acid
56. nitrotoluene
57. parathion
58. phenolsulfanate
59. phosgene
60. propargite
61. propylene oxide
62. pyrethrins
63. quinoline
64. resorcinol
65. strontium
66. strychnine
67. styrene
68. 2,4,5-T(2,4,5-trichlorophenoxy acetic acid)
69. TDE(tetrachlorodiphenylethane)
70. 2,4,5-TP (2,-(2,4,5-trichlorophenoxy) propanoic acid)
71. trichlorofon
72. Triethylamine
73. trimethylamine
74. uranium
75. vanadium
76. vinyl acetate
77. xylene
78. xylenol
79. zirconium

Section 14. Application Requirements of Section 4(7)(b)1 of this Regulation Exempted for Certain Categories and Subcategories of Primary Industries. Categories of dischargers for which Section 4(7)(b)1 of this regulation is exempted for categories and subcategories of the primary industries listed in Section 10 of this regulation.
(1) Coal mines.
(2) Testing and reporting for all four (4) organic fractions in the Greige Mills Subcategory of the Textile Mills industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
(3) Testing and reporting for the volatile, base/neutral, and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four (4) fractions in all other subcategories of this industrial category.
(4) Testing and reporting for all four (4) GC/MS fractions in the Porcelain Enameling industry.
(5) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry, and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.
(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.
(7) Testing and reporting for the acid, base/neutral, and pesticide fractions in the Petroleum Refining industrial category.
(8) Testing and reporting for the pesticide

fraction in the Papergrade Sulfite Subcategories of the Pulp Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Draft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical, and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash, and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

Section 15. Permit Testing Requirements for Exempted Categories and Subcategories of Primary Industries. For categories and subcategories of primary industries, the permit application testing requirements are as follows:

(1) Table I - Testing Requirements for Organic Toxic Pollutants by Industry Category:

Industrial category	GC/MS fraction[1]			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	-
Aluminum forming	(*)	(*)	(*)	-
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)	-	(*)	-
Coal mining	-	-	-	-
Coil coating	(*)	(*)	(*)	-
Cooper forming	(*)	(*)	(*)	-
Electric and electronic components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	-
Explosives manufacturing	-	(*)	(*)	-
Foundries	(*)	(*)	(*)	-
Gum and wood (all except tall oil, rosin, and rosin-based derivatives)	(*)	(*)	-	-
Gum and wood (tall oil rosin)	(*)	(*)	(*)	-
Gum and wood (rosin-based derivatives)	(*)	(*)	(*)	-
Inorganic chemicals manufacturing	(*)	(*)	(*)	-
Iron and steel manufacturing	(*)	(*)	(*)	-
Leather tanning and finishing	(*)	(*)	(*)	-
Mechanical products manufacturing	(*)	(*)	(*)	-
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining (except base and precious metals)	-	-	-	-
Ore mining (base and precious metals)	-	-	(*)	-
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	-
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	-	-	-
Pharmaceutical preparations	(*)	(*)	(*)	-
Photographic equipment and supplies	(*)	(*)	(*)	-
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)	-	-	-
Porcelain enameling	-	-	-	-
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paperboard mills[2]	-	-	-	-
Rubber processing	(*)	(*)	(*)	-
Soap and detergent manufacturing	(*)	(*)	(*)	-
Steam electric power plants	(*)	(*)	-	-
Textile mills (except for Greige Mills)	(*)	(*)	(*)	-
Textile mills (Greige Mills)	-	-	-	-
Timber products processing	(*)	(*)	(*)	(*)

*Testing required.

[1]The pollutants in each fraction are listed in Section 13(2), Table II of this regulation.

[2]Pulp and paperboard mills are listed in paragraph (a) of this subsection.

(a) Pulp and paperboard mills:

	GC/MS fraction[1]			
	Volatile	Acid	Base/neutral	Pesticide
Unbleached kraft	-	(*)	-	(*)
Semi-chemical	-	(*)	-	-
Unbleached kraft-neutral sulfite-semichemical	-	(*)	-	-
Paperboard from wastepaper	(*)	(*)	-	(*)
Dissolving kraft	(*)	(*)	-	-
Market bleached kraft	(*)	(*)	-	-
BCT bleached kraft	(*)	(*)	-	-
Fine bleached kraft	(*)	(*)	-	-
Papergrade sulfite	(*)	(*)	(*)	-
Dissolving sulfite pulp	(*)	(*)	-	-
Groundwood chemi-mechanical	(*)	(*)	-	-
Groundwood-thermo-mechanical	(*)	(*)	-	-
Groundwood-CMN papers	(*)	(*)	-	-
Groundwood fine papers	(*)	(*)	-	-
Soda	(*)	(*)	-	-
Deink	(*)	(*)	-	(*)
Nonintegrated-fine papers	-	(*)	-	-
Nonintegrated-tissue papers	(*)	(*)	-	(*)
Tissue from wastepaper	(*)	(*)	-	(*)
Papergrade sulfite	(*)	(*)	(*)	-
Unbleached kraft and semichemical	(*)	(*)	(*)	(*)
Wastepaper-molded products	(*)	(*)	(*)	(*)
Nonintegrated-light-weight papers	(*)	(*)	(*)	(*)
Nonintegrated-filter and nonwoven papers	(*)	(*)	(*)	(*)
Nonintegrated-paper-board	(*)	(*)	(*)	(*)

*Testing required.
-Testing not required unless "reason to believe" it is discharged.
[1]The pollutants in each fraction are listed in Section 13(2), Table II, of this regulation.

[Section 15. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m., in the Capital Plaza Tower. Any person interested in attending this hearing shall submit by November 16, 1985, a written request or written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: The proposed amendment incorporates changes in 40 CFR Part 122, 49 Fed. Reg. 38046 (September 26, 1984). These changes modify Sections 1, 3, 8, 12, 13, and 15. Also, new language is added to Section 15 incorporating 40 CFR Part 122 testing requirements not previously incorporated. The proposed amendment also incorporates a change in 40 CFR Section 122.21, 50 Fed. Reg. 35200 (August 29, 1985). This change modifies Section 1. The proposed amendment makes technical corrections to Sections 5 and 12. In addition, because KPDES became effective on September 30, 1983, existing Section 15 language is deleted at the request of the counsel of the Administrative Regulation Review Subcommittee. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated changes amplify existing permit requirements for those entities regarding stormwater discharges, data on effluent characteristics, and testing requirements.
(a) Direct and indirect costs or savings to those affected:
1. First year: For the incorporated changes, the affected entities must meet under NPDES the stated requirements. The proposed amendment simply incorporates in KPDES those changes. The requirements may or may not result in costs or savings. For the technical corrections and the deletion, there are no new costs or savings for the affected entities.
2. Continuing costs or savings: Same as (1)(a)1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation. No other alternative is feasible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment's incorporated changes modify KPDES application requirements. Those provisions apply to all KPDES permit holders. The proposed amendment also makes technical corrections. Thus, tiering is inappropriate for these corrections. The proposed amendment deletes existing Section 15. The deletion does not affect KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 401 KAR 5:060
SUBJECT/TITLE: KPDES application requirements.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES.
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT: Publicly owned wastewater treatment plant. Unit responsible for drainage.
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Sections 1, 3, 8, 12, 13, and 15 are modified regarding stormwater dischargers, effluent data, and testing. Technical corrections are made to Sections 5 and 12. Existing Section 15 is deleted.
PROVISION/MECHANICS: The changes amplify existing obligations. This is not applicable to the technical corrections and deletion.
FISCAL EXPLANATION: There is no fiscal impact on local governments.
PREPARER: Timothy Kuryla

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

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.994 [Chapter 224]
PURSUANT TO: KRS 224.033, 224.045 [224.020, 224.033(11), (19), (21), (22), 224.034, 224.060, 224.994(1), (4)]
NECESSITY AND FUNCTION: KRS 224.033[(19)] authorizes the Natural Resources and

Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all KPDES permits, the director will establish conditions as required on a case-by-case basis under Section 2 of this regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 revised as of July 1, 1984 [1982], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference, for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES regulations is subject to penalties under KRS 224.994(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.]

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be

extended by request of the director at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the [this] permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the [this] permit shall, upon conviction, be subject to penalties under KRS 224.994(4).

(11) Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified as indicated in 401 KAR 5:060, Section 3. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.994(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when: [The permittee shall give notice to the director as soon as possible of any planned physical alteration or additions to the permitted facility.]

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The [This] permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified [elsewhere] in the [this] permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the date submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which must be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(13) Occurrence of a bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The

permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of [A] bypass is not subject to the provisions of paragraphs (c) and (d) of this subsection.

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of subsection (12), twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

(d) Prohibition of a bypass.

1. Bypassing is prohibited, and the director may take enforcement action against a permittee for bypass, unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance. [This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and]

c. The permittee submitted notices as required under paragraph (c) of this subsection.

2. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.

(14) Occurrence of an upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, of other relevant evidence that:

1. An upset occurred and that the permittee can identify the [specific] cause(s) of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in paragraph (f) of subsection (12); and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(d) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this regulation, apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the director as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:" [That any activity has occurred or may occur which could result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge may exceed the highest of the following "notification levels:"]

a. One hundred micrograms per liter (100 mg/l);

b. Two hundred micrograms per liter (200 mg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 mg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7) [or (10)];

d. The level established by the director in accordance with Section (6)2 of this regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:" [That it has begun or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4(9).]

a. 500 micrograms per liter (500 ug/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7); or

d. The level established by the director in accordance with Section 2(6) of this regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the director of the following:

a. [1.] Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES regulations if it were directly discharging those pollutants; and

b. [2.] Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. [3.] For purposes of this paragraph, adequate notice shall include information on: the quality and quantity of effluent introduced into the POTWs; and, any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this regulation each KPDES permit will include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N (Part 401 et seq.), are incorporated by reference as specified in Section 4 of this regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) will be included, as applicable.

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the director will institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause. For any discharger within a primary industry category, as listed in 401 KAR 5:060, Section 10, requirements under the KPDES regulations will be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit will include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit will be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit will include those standards or limitations.

(b) After June 30, 1981, any permit issued will include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.

(c) The director will promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and regulations promulgated pursuant thereto;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 U.S.C. Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with Section 301(b)(1)(c) of CWA (33 U.S.C. Section 1311(b)(1)c).

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection will be includedin the permit, if applicable. Limitations will be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations will be included in the fact sheet under 401 KAR 5:075, Section 4.

(a) Limitations will control all toxic pollutants which:

1. The director determines, based on information reported in a permit application under 401 KAR 5:060, Section 4(7) or (11) [(10)], or in a notification under Section 1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a,b, or c of this regulation, upon a petition from the permittee or on the director's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under Section 3(12)(f) of this regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit will incorporate, as applicable in addition to Section 1(12) of this regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) [(9)] of this regulation; [pollutants in intake water for net limitations under Section 3(8) of this regulation;] frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this regulation.

(b) [4.] According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(c) [(b)] Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(9) Pretreatment program for POTWs. If applicable to the facility the permit will incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES regulations.

(b) Submit a local program when required by and in accordance with 401 KAR 5:055, Section 9, to assure compliance with pretreatment standards to the extent applicable in the KPDES regulations. The local program will be incorporated into the permit as described in 401 KAR 5:055, Section 9. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under KRS Chapter 224 and the KPDES regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits. The permit will include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit will be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6. This requirement applies to those permits which were issued pursuant to CWA Section 402(a)(1) (33 USC Section 1242(a)(1)), unless one (1) of the following exceptions apply:

(a) If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;

(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);

(c) If the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6;

(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that

decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants made by the director to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage sludge. Requirements will be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 401 KAR 47:050.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(16) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, will be included as applicable.

(17) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions will be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this regulation; with BMPs where limitations are infeasible; and under subsection (8) [(9)] of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions will be calculated based on design flow.

(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations. [Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous five (5) years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations.]

2.a.(i) The director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(ii) For the automotive manufacturing industry only, the director may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the director at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the director establishes permit conditions under subparagraph 2a(i) of this paragraph:

(i) The permit shall require the permittee to notify the director at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the director under subparagraph 2b of this paragraph, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless: [All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:]

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or [An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or]

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.034; or [In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of KRS 224.034.]

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:050, Section 1(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) (a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if: Pollutants in intake water. [Except as provided in subsection (8) of this section, effluent limitations imposed in permits will not be adjusted for pollutants in the intake water.]

1. The applicable effluent limitations and standards contained in 40 CFR Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The director may waive this requirement if the director finds that no environmental degradation will result.

(e) This section of this regulation does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

[(8) Net limitations.]

[(a) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a net basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:]

[1. a. The applicable federally promulgated effluent limitations and standards specifically provide that they will be applied on a net basis; or]

[b. The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and]

[2. The permit contains conditions requiring:]

[a. The permittee to conduct additional monitoring, for example, for flow and concentration of pollutants, as necessary to determine continued eligibility for and compliance with any such adjustments; and]

[b. The permittee to notify the director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under Section 6 of 401 KAR 5:070.]

[(b) Permit effluent limitations or standards adjusted under this paragraph will be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this subsection will be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards will not be adjusted to

the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor will effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.]

(8) [(9)] Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) [(10)] Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

(10) [(11)] Secondary treatment information. Permit conditions that involve secondary treatment will be written as provided in 401 KAR 5:045.

Section 4. Federal Effluent Limitations and Standards and New Source Performance Standards Incorporations. (1) 40 CFR Chapter I, Subchapter N, Parts 401 et seq. [400-424 and Part 425-460,] revised as of July 1, 1984 [1982], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.

(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:

Industry	40 CFR Part	Federal Register	Date
Aluminum Forming	467	48 FR 49126	10-24-83
		corrected by	
		49 FR 11629	03-27-84
Battery Manufacturing	461	49 FR 9108	03-09-84
		corrected by	
		49 FR 13879	04-09-84
		corrected by	
		49 FR 27946	07-09-84
Coal mining	434	47 FR 45382	10-13-82
		corrected by	
		48 FR 50321	11-01-83
Coil coating (Phase I)	465	47 FR 54232	12-01-82
		amended by	
		48 FR 31403	07-08-83
		amended by	
		48 FR 41409	09-15-83
		corrected by	
		49 FR 33648	08-24-84
(Phase II, Canmaking)	465	48 FR 52380	11-17-83
		amended by	
		48 FR 31403	07-08-83
		corrected by	
		49 FR 14104	04-10-84
Copper Forming	468	48 FR 36942	08-15-83
		amended by	
		48 FR 41409	09-15-83
Electrical/Electronic Components (Phase 1)	469	48 FR 15382	04-08-83
		amended by	
		49 FR 5921	02-16-84
(Phase II)	469	48 FR 55690	12-14-83
		corrected by	
		49 FR 1056	01-09-84
Electroplating (Pretreatment)	413	44 FR 52590	09-07-79
		amended by	
		48 FR 32462	07-15-83
		corrected by	
		48 FR 43680	09-26-83
		amended by	
		48 FR 41409	09-15-83
Inorganic Chemicals (Phase 1)	415	47 FR 28260	06-29-82
		amended by	
		47 FR 55226	12-08-82
(Phase II)	415	49 FR 33402	08-22-84
		corrected by	
		49 FR 37594	09-25-84
Iron & Steel Manufacturing	420	47 FR 23258	05-27-82
		corrected by	
		47 FR 24554	06-07-82
		corrected by	
		47 FR 41738	09-22-82
		corrected by	
		48 FR 51773	11-14-83
		amended by	
		49 FR 21024	05-17-84
		corrected by	
		49 FR 24726	06-15-84
		corrected by	
		49 FR 25634	06-22-84
Leather tanning and finishing	425	47 FR 52848	11-23-82
		amended by	
		48 FR 30115	06-30-83
		amended by	
		48 FR 31403	07-08-83
		corrected by	
		48 FR 32346	07-15-83
		corrected by	
		48 FR 35649	08-05-83
		amended by	
		48 FR 41409	09-15-83
Metal Finishing	433		
	413	48 FR 32462	07-15-83
		amended by	
		48 FR 41409	09-15-83
		corrected by	
		48 FR 43680	09-26-83
Nonferrous Metals (Phase I)	421	49 FR 8742	03-08-84
		corrected by	
		49 FR 26738	06-29-84
		corrected by	
		49 FR 29792	07-24-84
		corrected by	
		50 FR 12252	03-28-85

Oil and Gas Extraction	435	41 FR 44942	10-13-76
		amended by 44 FR 22069	04-13-79
		amended by 47 FR 31554	07-21-82
Ore mining	440	47 FR 54598	12/03/82
Petroleum refining	419	47 FR 46434	10-18-82
		amended by 50 FR 28516	07-12-85
Pharmaceuticals	439	48 FR 49808	10-27-83
		corrected by 48 FR 50322	11-01-83
		amended by 50 FR 18486	05-01-85
Plastics	463	49 FR 49026	12-17-84
		corrected by 50 FR 18248	04-30-85
Porcelain enameling	466	47 FR 53172	11-24-82
		amended by 48 FR 31403	07-08-83
		amended by 48 FR 41409	09-15-83
Pulp and paper	430		
	431	47 FR 52006	11-18-82
		corrected by 48 FR 13176	03-30-83
		amended by 48 FR 31403	07-08-83
Steam-electric	423	47 FR 52290	11-19-82
		amended by 48 FR 31403	07-08-83
Textile mills	410	47 FR 33810	09-02-82
		corrected by 48 FR 39624	09-01-83
Timber	429	46 FR 8260	01-26-81
		amended by 46 FR 57287	11-23-81

[Section 5. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m., in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request or the written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: The proposed amendment incorporates changes in 40 CFR Part 122, 49 Fed. Reg. 38046 (September 26, 1984). These changes modify Sections 1 and 3. The proposed amendment updates the list in Section 4 of the effluent standards and limitations of 40 CFR Part 401 et seq. The proposed amendment makes technical corrections to Sections 1, 2, 3, and 4. In addition, because KPDES became effective on September 30, 1983, Section 5 is deleted at the request of the counsel of the Administrative Regulation Review Subcommittee. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated changes amplify existing requirements regarding operation and maintenance, reporting, bypassing, upsets, toxic discharges, and calculation of conditions. The pollutants in intake water provision is expanded and the net limitation provision is eliminated. The Section 4 changes affect those entities engaged in the listed activities.
(a) Direct and indirect costs or savings to those affected:
1. First year: For the incorporated changes, the affected entities must meet under NPDES the stated requirements. The proposed amendment simply incorporates in KPDES those changes. The requirements may or may not result in costs or savings. For the technical corrections and the deletions, there are no new costs or savings for the affected entities.
2. Continuing costs or savings: Same as (1)(a)1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation. No other alternative is feasible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment's incorporated changes modify general KPDES permit conditions. These provisions apply to all KPDES permit holders. The proposed amendment also makes technical corrections. Thus, tiering is inappropriate for these corrections. The proposed amendment deletes Section 5. The deletion does not affect KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 401 KAR 5:065
SUBJECT/TITLE: KPDES permit conditions.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes

TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES.
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT: Publicly owned wastewater treatment plant.
FISCAL SUMMARY: N/A
MEASURE'S PURPOSE: Sections 1 and 3 are modified regarding operation plus maintenance, reporting, bypassing, upsets, toxic discharges, and permit calculations. Section 4 changes update effluent standards. Technical corrections are made to Sections 1, 2, 3, and 4. Section 5 is deleted.
PROVISION/MECHANICS: The changes amplify existing obligations. This is not applicable to the technical corrections and deletion.
FISCAL EXPLANATION: There is no fiscal impact on local governments.
PREPARER: Timothy Kuryla

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

401 KAR 5:070. Provisions of the KPDES permit.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060 [Chapter 224]
PURSUANT TO: KRS 224.033, 224.045 [224.020, 224.033(19), (21), (22), (23), 224.034(1), (4), 224.060]
NECESSITY AND FUNCTION: KRS 224.034(1) provides that the Natural Resources and Environmental Protection Cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d). KRS 224.034(1) requires that any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 U.S.C. Sections 1311, 1312, and 1326(a). Further, KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification, revocation and reissuance. This amendment incorporates changes in 40 CFR Sec. 122.62, 48 Fed. Reg. 39620 (September 1, 1983), that result from the U.S. Environmental Protection Agency November 16, 1981 settlement agreement for Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated changes, U.S. District Court of Appeals, District of Columbia Circuit.

Section 1. Duration of Permits. (1) KPDES permits will be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(4)(b), the term of a permit will not be extended by modification beyond this maximum duration. The director may issue a permit for a duration that is less than the full five (5) year term.
(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2)2c, d, and e, whether or not applicable federal effluent limitations guidelines have been promulgated or approved.

Section 2. Schedules of Compliance. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and regulations promulgated pursuant thereto.
(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible. In addition, schedules of compliance will require compliance not later than the applicable [statutory] deadline [as] specified in 401 KAR 5:080.
(b) The first KPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) year before recommencement of discharge. [The first KPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger will not contain a schedule of compliance under this section.]
(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.
1. The time between interim dates will not exceed one (1) year.
2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
(d) Reporting. The permit will be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.
(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:
(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule

requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule will lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance no later than the deadline specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules will include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

Section 3. Requirements for Recording and Reporting of Monitoring Results. All permits will specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall be no less frequent than specified in Section 2 of this regulation.

Section 4. Effect of a Permit. (1) Except for any toxic effluent standards and prohibitions included in 401 KAR 5:065, Section 1(1)(b), compliance with a KPDES permit during its term constitutes compliance, for purposes of enforcement, with the KPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections 6 and 7 of this regulation.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

Section 5. Transfer of Permits. (1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Section 6 of this regulation, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the KPDES regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the director at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The director does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this regulation. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.

(3) If a new KPDES permit is prepared as a result of either subsection (1) or (2) of this section, then the new permittee shall be subject to the "duplicate permit fee" as specified in 401 KAR 5:085, Section 5.

Section 6. Modification or Revocation and Reissuance of Permit. When the director receives any information, the director may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 401 KAR 5:075 must be followed.

(1) Causes for modification. The following are causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of permit conditions that are different or absent in the existing

permit.

(b) Information. If the director has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised regulations, guidance, or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued, then cause may exist for modification. However, the permit may be modified only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards of 401 KAR 5:031, or the secondary treatment regulations of 401 KAR 5:045; [The permit condition requested to be modified was based on EPA effluent limitation guidelines or water quality standards;]

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with 401 KAR 5:075, Section 2, within ninety (90) days after the amendment, revision, or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with 401 KAR 5:075, Section 2, within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the director determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a KPDES compliance schedule be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) In addition the director may modify a permit:

1. When the permittee has filed a request for a variance under 401 KAR 5:055, Section 7, or for "fundamentally different factors" within the time specified in 401 KAR 5:080, Section 3, and the director processes the request under the applicable provisions.

2. When required to incorporate as applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under 401 KAR 5:065, Section 2(3), for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 CFR Section 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for a change in effluent limitations based on pollutants in intake water [on a net basis] under Section 3(8) of 401 KAR 5:065, Section 3(7).

5. When a discharger is no longer eligible for net limitations, as provided in Section 3(8)(a)2b of 401 KAR 5:065, Section 3(7).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 4.

9. To establish a "notification level" as provided in 401 KAR 5:065, Section 2(6).

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, in the case of the POTW which has received a grant under CWA Section 202(a)(3) (33 U.S.C. Section 1282(a)(3)) for 100 percent of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2) (33 U.S.C. Section 1282(a)(2)). In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the director to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. When the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following regulation: 401 KAR 5:065, Section 1(3) and (4).

13. When the permittee's effluent limitations were imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1)) (33 U.S.C. Section 1342(a)(1)) and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.

14. To correct technical mistakes, such as errors n calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in settling effluent limitations imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1) (33 U.S.C. Section 1342(a)(1)) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required

by a subsequently promulgated effluent limitations guideline).

16. When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following regulations: 401 KAR 5:065, Section 3(2), 401 KAR 5:065, Section 3(3), and 401 KAR 5:055, Section 6(2).

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively revoke or reissue a permit:

(a) Cause exists for termination under Section 7 of this regulation and the director determines that modification or revocation and reissuance is appropriate.

(b) The director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section will be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements;

(d) Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director;

(e) Change the construction schedule for a discharger which is a new source; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Section 7. Termination of Permit. (1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(2) [(d)] KPDES permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(3) [(2)] The director will follow the applicable procedures of 401 KAR 5:075 in terminating a KPDES permit under this section.

[Section 8. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.]

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request or the written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment incorporates changes in 40 CFR Part 122, 49 Fed. Reg. 38046 (September 26, 1984). These changes modify Sections 2 and 6. The proposed amendment also incorporates a change in 40 CFR Part 122, 49 Fed. Reg. 37009 (September 20, 1984). This change modifies Section 6.

The proposed amendment makes technical corrections to Section 6.

In addition, because KPDES became effective on September 30, 1983, Section 8 is deleted at the request of the Counsel of the Administrative Regulation Review Subcommittee.

Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated changes amplify compliance provisions regarding new sources and new discharges plus conditions for permit modifications.

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

1. First year: For the incorporated changes, the affected entities are given under NPDES the additional compliance and modification provisions. The proposed amendment simply incorporates in KPDES those changes. These additional provisions may or may not result in costs or savings.

For the technical corrections and the deletion, there are no new costs or savings for the affected entities.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations.

The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation.

No other alternative is feasible.

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

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

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

(6) Any additional information or comments: none

Tiering:
Was tiering applied? No. The proposed amendment's incorporated changes amplify permit compliance and modification. In that sense, tiering is applied. However, compliance and modification provisions apply to all KPDES holders.

The proposed amendment also makes technical corrections. Thus, tiering is inappropriate for these corrections.

The proposed amendment deletes Section 8. The deletion does not affect KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 401 KAR 5:070
SUBJECT/TITLE: Provisions of the KPDES permit.
SPONSOR: National Resouces and Environmental Protection Cabinet, Department of Environmental Protection, Division of Water
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES
LEVEL(S) OF IMPACT: City, County, Urban County Government; Publicly owned wastewater treatment plant
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Not applicable
MEASURE'S PURPOSE: Sections 1, 2, and 6 are modified regarding new sources and new dischargers plus conditions for permit modifications. Technical corrections are made to Section 6. Section 8 is deleted.
PROVISION/MECHANICS: The changes amplify existing obligations. This is not applicable to the technical corrections and deletion.
FISCAL EXPLANATION: There is no fiscal impact on local governments.
PREPARER: Timothy Kuryla

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

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.005, 224.020, 224.033, 224.034, 224.081, 224.083, 224.085 [224.033(5),(9),(23)]

PURSUANT TO: KRS 224.033, 224.045 [224.020, 224.033(8), (11), (19), (22), 224.034, 224.081, 224.083 and 224.085]

NECESSITY AND FUNCTION: KRS 224.033[(19)] authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034(1) establishes that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). This regulation sets forth the procedures through which the cabinet will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. (1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the director an application for the permit as required under 401 KAR 5:060, Section 1. Applications are not required for KPDES general permits. However, operators who elect to be covered by a general permit shall submit written notification to the director at such time as the director indicates in Section 3 of this regulation.

(2) The director will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 3.

(4) The director will review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger will be reviewed for completeness by the director within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the director will notify the applicant in writing whether the application is complete. If the application is incomplete, the director will list the information necessary to make the application complete. When the application is for an existing source, the director will specify in the notice of deficiency a date for submitting the necessary information. The director will notify the applicant that the application is complete upon receiving this information. After the application is completed, the director may request additional information from an applicant when necessary to clarify,

modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and regulations promulgated pursuant thereto.

(6) If the director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the director will notify the applicant and a date will be scheduled.

(7) The effective date of an application is the date on which the director notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the director will no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the director intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under this regulation.

(9) Conflicts of interest.

(a) The director who issues a permit will be subject to the KPDES policy memorandum concerning conflicts of interest.

(b) Any person aggrieved by the issuance of a permit under the KPDES regulations may challenge the permit pursuant to Section 13 of this regulation if the policy memorandum has been violated.

(c) The hearing officer will remand any permit issued in violation of the policy memorandum to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit will be subject to the policy memorandum set forth in paragraph (a) of this subsection. The reconsideration will require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the director as a direct result of a conflict of interest.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Termination. (1) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the director decides the request is not justified, the director will send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the director tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the director shall prepare a draft permit under Section 3 of this regulation incorporating the proposed changes. The director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the director will require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit will remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in 401 KAR 5:070, Section 6(3) are not subject to the requirements of this section.

(4) If the director tentatively decides to terminate a permit under 401 KAR 5:070, Section 7, the director will issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this regulation.

Section 3. Draft Permits. (1) Once an application is complete, the director will tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the director makes a preliminary decision to deny the permit application, the director will issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the director's determination under Section 11 of this regulation is that the preliminary decision to deny the permit application was incorrect, the director will withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the director makes a preliminary decision to issue a KPDES general permit, the director will prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the director decides to prepare a draft permit, the director will prepare a draft permit that contains the following information:

(a) All conditions under 401 KAR 5:065, Section 1;

(b) All compliance schedules under 401 KAR 5:070, Section 2;

(c) All monitoring requirements under 401 KAR 5:070, Section 3; and

(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section will be accompanied by a fact sheet and will be based on the administrative record, publicly noticed, and make available for public comment. The director will give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.081

and Section 13 of this regulation following the issuance of a final decision.

Section 4. Fact Sheets. (1) A fact sheet will be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (4) of this section, and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The director will send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet will include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) A quantitative and qualitative description of the discharges described in the application;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing;

3. Any other procedures under KRS 224.081 and Section 13 of this regulation by which the public may participate in the final decision; and

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4) (a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);

2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8) [(9)]; or

3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or a municipality, an explanation of the director's decision on regulation of users under 401 KAR 5:065, Section 2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

Section 5. Public Notice of Permit Actions and Public Comment Period. (1) Scope.

(a) The director will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under Section 3(2) of this regulation;

2. A draft permit has been prepared under Section 3(4) of this regulation;

3. A hearing has been scheduled under Section 7 of this regulation; and

4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:050.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 2 of this regulation. Written notice of that denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing will be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section will be given by the following methods:

(a) The cabinet will mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.

1. The applicant, except for KPDES general permittees, and Region IV, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historic Society and other appropriate government authorities, including any affected sates;

3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

4. Any User identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(b) For major permits and KPDES general permits, the cabinet will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to

give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this regulation [part] will contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits when there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this regulation will contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge when a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 U.S.C. Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section will be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

Section 6. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 5 of this regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in Section 12 of this regulation.

Section 7. Public Hearings. (1) The director will hold a public hearing when a significant degree of public interest in a draft permit is found on the basis of requests. The director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in Section 5 of this regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this regulation will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's preliminary decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the director. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may [and they should] be [freely] established under Section 5 of this regulation [to the extent]. Nothing in this

section will [shall] be construed to prevent any person agrieved by a final permit decision from filing a demand for a hearing under KRS 224.081 and Section 13 of this regulation.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. (1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the director in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions will be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the director may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

Section 10. Reopening of the Public Comment Period. (1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the director may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this regulation;

(b) Prepare a revised fact sheet under Section 4 of this regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this regulation should define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this regulation.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 5 of this regulation, the director will issue, deny, modify, revoke, reissue, or terminate a permit. The director will notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice will include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision will become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:

(a) A later effective date is specified in the decision; or

(b) A stay is granted pursuant to KRS 224.081(2) and Section 13 of this regulation; or

(c) No comments requested a change in the draft permit, in which case the permit will become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to demanding a hearing under KRS 224.081(2) and Section 13 of this regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the director and shall not begin on the date the permit decision becomes effective.

Section 12. Response to Comments. (1) At the time that any final permit decision is issued under Section 11 of this regulation the director shall issue a response to comments. This response will:

(a) [(1)] Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) [(2)] Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response will fully consider all comments resulting from any hearing conducted under this regulation.

(2) [(3)] The response to comments will be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.081, 224.083, 224.085 and any regulations promulgated pursuant thereto.

Section 13. Hearings under KRS 224.081. (1) A determination under Section 11 when issued by the director, will be subject to a demand for a hearing pursuant to KRS 224.081(2).

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to KRS 224.081(2).

(3) Any hearing held pursuant to this section will be subject to the provisions of KRS 224.083 and 224.085.

(4) Failure to raise issued pursuant to Section 8 of this regulation will not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.081(2).

[Section 14. Date of Applicability. The provisions of this regulation shall become effective upon the date of program approval.]

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at 12 noon

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on

November 21, 1985, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request or the written documents to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment makes technical corrections to Sections 4, 5 and 12.

In addition, because KPDES became effective on September 30, 1983, Section 14 is deleted at the request of the Counsel of the Administrative Regulation Review Subcommittee.

Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The technical corrections and the deletion have no effect on those entities.

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

1. First year: None

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed technical corrections and deletion can only be implemented through amending the existing administrative regulation.

No other alternative is feasible.

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

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

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment makes technical corrections. Thus tiering is inappropriate for these corrections. The proposed amendment deletes Section 14. The deletion does not affect KPDES permit holders.

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

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060 [Chapter 224]

PURSUANT TO: KRS 224.033, 224.045 [224.026, 224.033(19), (21), (23), 224.034(1), (4), 224.060]

NECESSITY AND FUNCTION: KRS 224.033[(19)] authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). This section further provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 U.S.C. Sections 1311, 1312, and 1326(a). This regulation sets forth the criteria and standards for the KPDES permitting system.

Section 1. Criteria and Standards for Technology-Based Treatment Requirements. (1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements in KPDES permits including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations.

(2) Compliance with technology-based treatment requirements in KPDES permits.

(a) General. Technology-based treatment requirements represent the minimum level of control that will be imposed in a KPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

1. For POTWs effluent limitations based upon:

a. Secondary treatment as required by CWA Section 301(b)(1)(B) (33 U.S.C. Section1311(b)(1)(B)) - from date of permit issuance; and

b. The best practicable waste treatment technology as required by CWA Section 301(b)(1)(A) (33 U.S.C. Section (b)(1)(A)) - not later than July 1, 1983; and

2. For dischargers other than POTWs, except as otherwise provided in the KPDES regulations, effluent limitations requiring:

a. The best practicable control technology currently available (BPT) as required by CWA Section 301(b)(1)(A) (33 U.S.C. Section 1311(b)(1)(A)) - from date of permit issuance;

b. For conventional pollutants, the best conventional pollutant control technology (BCT) - not later than July 1, 1984;

c. For all toxic pollutants referred to in Section 5 of this regulation as required by CWA Section 301(b)(2)(A) (33 U.S.C. Section 1311(b)(2)(A)) the best available technology economically achievable (BAT) - not later than July 1, 1984;

d. For all toxic pollutants other than those listed in Section 5 of this regulation effluent limitations based on the BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit; and

e. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three (3) years after the date such effluent limitations are incorporated into a KPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) Variances and extensions.

1. The following variance from technology-based treatment requirements is authorized by KRS Chapter 224 and may be applied for under 401 KAR 5:055. For dischargers other than POTWs:

a. Economic variance from BAT, as indicated in 401 KAR 5:055, Section 7(1);

b. Thermal variance from BPT, BCT, and BAT, under Section 4 of this regulation, may be authorized.

2. An extension of the BAT deadline may be applied for under 401 KAR 5:055, Section 7(3) for dischargers other than POTWs, for use of innovative technology.

(c) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one (1) of the following three (3) methods:

1. Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be re-examined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under 401 KAR 5:055, and Section 3 of this regulation.

2. On a case-by-case basis under CWA Section 402(a)(1) (33 U.S.C. Section 1342 (a)(1)), to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in paragraph (d) of this subsection and shall consider: [On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall consider:]

a. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information [, including EPA draft or proposed development documents or guidance]; and

b. Any unique factors relating to the applicant.

3. Through a combination of the methods in paragraph (c)1 and 2 of this subsection. Where EPA-promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of KRS Chapter 224.

4. Limitations developed under paragraph (c)2 of this subsection may be expressed, where appropriate, in terms of toxicity if it is shown that the limits reflect the appropriate requirements of KRS Chapter 224.

(d) In setting case-by-case limitations pursuant to paragraph (c) of this subsection, the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirements:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. Process changes;

e. The cost of achieving such effluent reduction; and

f. Non-water quality environmental impact (including energy requirements).

(e) [(d)] Technology-based treatment requirements are applied prior to or at the point of discharge.

(f) [(e)] Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

1. The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

2. The discharger agrees to waive any opportunity to request a variance under 401 KAR 5:055, Section 3; and

3. The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(g) [(f)] Technology-based effluent limitations will be established under this regulation for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(h) [(g)]1. The director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which will not be subject to modification where:

a. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

b.(i) The limitation reflects BAT-level control of discharges of one (1) or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(ii) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(iii) The fact sheet required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in paragraph (h) [(g)]1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

2. The director may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

a. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or

b.(i) The limitation reflects BAT-level control of discharges, or an appropriate level of one (1) or more hazardous substance(s) which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substances which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

(ii) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(iii) The fact sheet, required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in paragraph (h) [(g)]1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

c. [(iv)] Hazardous substances which are also toxic pollutants are subject to paragraph (h) [(g)]1 of this subsection.

3. The director may not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

4. Toxic pollutants identified under paragraph (h) [(g)]1 of this subsection remain subject to 401 KAR 5:065, Section 1(15), which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

Section 2. Criteria for Issuance of Permits to Aquaculture Projects. (1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under KRS Chapter 224 in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are KPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the KPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No KPDES permit will be issued to an aquaculture project unless:

1. The director determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the director, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The director determines that the crop shall not have a significant potential for human health hazards resulting from its consumption; and

5. The director determines that migration of pollutants from the designated project area to waters of the Commonwealth outside of the aquaculture project will not cause or contribute to a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project will not result in the enlargement of a pre-existing mixing zone area beyond what had been designated for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a plan approved by EPA.

(c) Designated project areas will not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or

beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Section 3. Criteria and Standards for Determining Fundamentally Different Factors. (1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations or pretreatment standards alternative to those required by promulgated EPA effluent limitations guidelines and categorical pretreatment standards, hereinafter referred to as "national limits," shall be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated by EPA except for best practicable treatment standards for steam-electric plants.

(b) This case-by-case review will only be done if data specific to that discharger indicate they present [it presents] factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes, or other facilities related to the discharger are fundamentally different from the factors considered during the development of the national limits may request a fundamentally different factors variance under 401 KAR 5:055, Section 3. In addition, such a variance may be proposed by the director in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section, fundamentally different factors variance, will be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested;

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of 401 KAR 5:075.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference;

2. The alternative effluent limitation or standard will ensure compliance with the KPDES regulations and KRS Chapter 224; and

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits will be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities, processes employed, process changes, and engineering aspects of the application of control technology; and

6. Cost of compliance with required control technology.

(e) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in Section 1 of this regulation;

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this subsection;

3. The discharger's ability to pay for the required waste treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the director in accordance with 401 KAR 5:075.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this paragraph; and

3. The appropriate requirements of subsection (2) of this section have been met.

Section 4. Criteria for Determining Alternative Effluent Limitations. (1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations described in CWA Section 316(a) (33 U.S.C. Section 1326(a)) will also be used in KPDES permits and will be referred to as 401 KAR 5:055, Section 7(4), variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055, Section 7(4).

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with 401 KAR 5:065, Section 1(1)(b), and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055, Section 7(4).

(3) Early screening of applications for 401 KAR 5:055, Section 7(4), variances.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments, and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the director at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the director's approval a detailed plan of study which the discharger will undertake to support its 401 KAR 5:055, Section 7(4), demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical, and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the director will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger shall provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of 401 KAR 5:055, Section 7(4), variance shall include only such information described in paragraphs (a) and (b) of this subsection and 401 KAR 5:075 as the director requests within sixty (60) days after receipt of the permit application.

(d) The director will promptly notify the Secretary of the U.S. Department of Commerce, the Secretary of the U.S. Department of the Interior, and any affected state of the filing of the request and will consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a 401 KAR 5:055, Section 7(4), application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the director.

(4) Criteria and standards for the determination of alternative effluent limitations [under this section].

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, shall assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the director may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the administrator under CWA Section 304(a) (33 U.S.C. Section 1314(a)) or any other information he deems

relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

(d) In determining whether or not prior appreciable harm has occurred, the director will consider the length of time in which the applicant has been discharging and the nature of the discharge.

Section 5. New Sources and New Dischargers. (1) Definitions.

(a) "New source" and "new discharger" are defined in 401 KAR 5:050, Section 1.

(b) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(c) "Existing source" means any source which is not a new source or a new discharger.

(d) "Site" is defined in 401 KAR 5:050, Section 1.

(e) "Facilities or equipment" means buildings, structures process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial committment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(2) Criteria for new source determination.

(a) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in 401 KAR 5:050, Section 1; and:

1. It is constructed at a site at which no other source is located;

2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(b) A source meeting the requirements of paragraph (a) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See 401 KAR 5:050, Section 1.

(c) Construction on a site at which an existing source is located results in a modification subject to 401 KAR 5:070, Section 6 rather than a new source (or a discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (a) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(d) Construction of a new source as defined under 401 KAR 5:050, Section 1 has commenced if the owner or operator has:

1. Begun or caused to begin as part of a continuous on-site construction program:

a. Any placement, assembly, or installation of facilities or equipment; or

b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

(c) When a KPDES permit issued to a source with a "protection period" under subsection (3)(a) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of Section 1 of this regulation and CWA Section 301 (33 U.S.C. Section 1311) and any other then applicable CWA requirements immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.

(d) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator shall meet all permit conditions. The requirements of this subsection do not apply if the owner or operator is issued a permit containing a compliance schedule under 401 KAR 5:070, Section 2(1).

(e) After the effective date of new source performance standards, no owner or operator shall operate the source in violation of those standards applicable to the source.

(3) Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subsection.

(a) Except as provided in paragraph (b) of

this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under CWA Section 301(b)(2) (33 U.S.C. Section 1311(b)(2)) for the soonest ending of the following periods:

1. Ten (10) years from the date that construction is completed;

2. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater; or

3. The period of depreciation or amortization of the facility for the purposes of Internal Revenue Code Section 167 or 169 (26 U.S.C. Section 167 or 169).

(b) The protection from more stringent standards of performance afforded by paragraph (a) of this subsection does not apply to:

1. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA Section 307(a) (33 U.S.C. Section 1317 (a)); or

2. Additional permit conditions in accordance with 401 KAR 5:055, Section 1(2) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

Section 6. [5.] Toxic Pollutants. References throughout the KPDES regulations establish specific requirements for discharges of toxic pollutants. The following listing identifies those toxic pollutants required to be considered for each of these KPDES requirements:

(1) Acenaphthene.
(2) Acrolein.
(3) Acrylonitrile.
(4) Aldrin/dieldrin.
(5) Antimony and compounds.
(6) Arsenic and compounds.
(7) Asbestos.
(8) Benzene.
(9) Benzidine.
(10) Beryllium and compounds.
(11) Cadmium and compounds.
(12) Carbon tetrachloride.
(13) Chlordane (technical mixture and metabolites).
(14) Chlorinated benzenes (other than dichloro-benzenes).
(15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane).
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers).
(17) Chlorinated naphthalene.
(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).
(19) Chloroform.
(20) 2-chlorophenol.
(21) Chromium and compounds.
(22) Copper and compounds.
(23) Cyanides.
(24) DDT and metabolites.
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichloro-benzenes).
(26) Dichlorobenzidine.
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene).
(28) 2,4-dichlorophenol.
(29) Dichloropropane and dichloropropene.
(30) 2,4-dimethylphenol.
(31) Dinitrotoluene.
(32) Diphenylhydrazine.
(33) Endosulfan and metabolites.
(34) Endrin and metabolites.
(35) Ethylbenzene.
(36) Fluoranthene.
(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ether, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis(chloroethyoxy) methane and polychlorinated diphenyl ethers).
(38) Halomethanes (other than those listed elsewhere; includes methylene chlorid methylchloride, methyl-bromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane).
(39) Heptachlor and metabolites.
(40) Hexachlorobutadiene.
(41) Hexachlorocyclohexane (all isomers).
(42) Hexachlorocyclopentadiene.
(43) Isophorone.
(44) Lead and compounds.
(45) Mercury and compounds.
(46) Naphthalene.
(47) Nickel and compounds.
(48) Nitrobenzene.
(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol).
(50) Nitrosamines.
(51) Pentachlorophenol.
(52) Phenol.
(53) Phthalate esters.
(54) Polychlorinated biphenyls (PCBs).
(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes).
(56) Selenium and compounds.
(57) Silver and compounds.
(58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).
(59) Tetrachloroethylene.
(60) Thallium and compounds.
(61) Toluene.
(62) Toxaphene.
(63) Trichloroethylene.
(64) Vinyl chloride.
(65) Zinc and compounds.
(66) The term "compounds" shall include organic and inorganic compounds.

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

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by November 16, 1985, a written request or the written documents to: Clyde P.

Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water, Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin

(1) Type and number of entities affected: The proposed amendment incorporates change in 40 CFR Part 122, 49 Fed. Reg. 38046 (September 26, 1984). These changes modify Sections 1 and new 5. The proposed amendment incorporates from 40 CFR Section 122.29 new source and new discharger provisions not previously incorporated. These provisions are incorporated into new Section 5. The proposed amendment makes technical corrections to Sections 1, 4 and new 6. In addition, because KPDES became effective on September 30, 1983, existing Section 6 is deleted at the request of the Counsel of the Administrative Regulation Review Subcommittee. Entities affected are those subject to 401 KAR 5:085 (KPDES). The incorporated changes amplify existing provisions on the methodology of imposing technology based limitations in permits the new source and new discharger provisions codify and amplify existing permit requirements.

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

1. First year: For the incorporated changes, the affected entities must meet under NPDES the stated requirements. The proposed amendment simply incorporates in KPDES these changes. The new source and new discharger provisions create no newly regulated entities. For the technical corrections and the deletion, there are no new costs or savings for the affected entities.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections and deletions can only be implemented through amending the existing administrative regulation. No other alternative is feasible.

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

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

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

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. The proposed amendment's incorporated changes amplify the methods of imposing technology permit limitations and requirements for new sources and new dischargers. These provisions apply to all KPDES permit holders. The proposed amendment also makes technical corrections. Thus, tiering is inappropriate for these corrections. The proposed amendment deletes existing Section 6. The deletion does not affect KPDES permit holders.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 401 KAR 5:080
SUBJECT/TITLE: Criteria and standards for the Kentucky Pollution Discharge Elimination System.
SPONSOR:Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES.
LEVEL(S) OF IMPACT: City, County, Urban County Government
BUDGET UNIT(S) IMPACT: Publicly owned wastewater treatment plant
FISCAL SUMMARY: Not applicable
MEASURE'S PURPOSE: Sections 1 and 5 are modified regarding methodology of imposing technology based permit limitations. New Section 5 is added to codify and amplify new source and new discharger permit requirements. Technical corrections are made to Sections 1, 4 and new 6. Existing Section 6 is deleted.
PROVISION/MECHANICS: The methodology provisions amplify existing Division of Water obligations. The new source plus new discharger changes amplify existing obligations. This is not applicable to the technical corrections and deletions.
FISCAL EXPLANATION: There is no fiscal impact on local governments.
PREPARER: Timothy Kuryla

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

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033(19), (20), 224.034, 224.060, 224.073

PURSUANT TO: KRS 224.033(17)

NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075, and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required by 401 KAR 5:060, Section 1 to have a permit except for publicly owned sources and sources permitted under a general permit issued under 401 KAR

5:055, Section 5.

Section 2. Definitions. The following definitions described terms used in this regulation. Terms not further defined in this regulation have the meaning given by KRS 224.005 or, if not defined, the meaning attributed by common use.

(1) "Agriculture operation" means operations that use confined feeding in livestock or livestock-byproduct production with manure handling facilities that qualify as concentrated animal feeding operations in accordance with 401 KAR 5:050.

(2) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(3) "Intermediate non-publicly owned treatment works" means facilities which discharge a design flow rate of between 10,000 gallons per day and 49,999 gallons per day wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's 205(g) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(4) [(3)] "Large non-publicly owned treatment works" means facilities which discharge a design flow rate greater than or equal to 50,000 [10,000] gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's 205(g), (33 U.S.C. Section 1285(g)), Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(5) [(4)] "Major industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate greater than or equal to 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. A "major industry" designation, as defined in this regulation, is not a criteria for classification as a major facility, as defined in 401 KAR 5:050.

(6) [(5)] "Minor industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate less than 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a "major industry."

(7) [(6)] "Non-conventional pollutant" means all pollutants not considered to be a conventional pollutant as defined in this regulation and including priority pollutants indentified in 401 KAR 5:060, Section 13.

(8) [(7)] "Non-process industry" means industries that generate and discharge only non-process wastewater while engaged in commercial activities including manufacturing, resource recovery, products distributions, and wholesale and retail trade. These industries discharge non-process wastewater, for example, non-contact cooling or stockpile run-off, and discharge wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration (LC) for fifty (50) percent mortality (96 hr. LC 50) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be a "minor industry."

(9) "Publicly owned treatment works (POTW)" for the purpose of this regulation shall be those facilities as defined in 401 KAR 5:050, Section 1(40), and which are eligible for funding under United States Environmental Protection Agency's 205(g) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(10) [(8)] "Small non-publicly owned treatment works" means facilities which discharge a design flow rate less than 10,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's 205(g) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35. [If the facility does not qualify under this definition then the facility shall be considered to be a "large non-publicly owned treatment work."]

(11) [(9)] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to discharge from a wastewater treatment unit will be assessed a filing fee in the amount of twenty (20) percent of the base fee in Section 4(2)(a) of this regulation.

(2) Any owner or operator who submits an application for a variance will include with the application a filing fee in the amount of the base fee in Section 6(2)(a) of this regulation.

(3) A filing fee is not refundable if a discharge permit or variance application to which it is related is denied or withdrawn.

(4) The filing fee will be applied toward the discharge permit or variance fee assessed respectively in Sections 4 and 6 of this regulation.

Section 4. Discharge Permit Fees. (1)(a) Every owner or operator who is issued a discharge permit shall be assessed a discharge permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the discharge permit can be issued, under 401 KAR 5:075, Section 11, the cabinet will notify the applicant and send a bill for the discharge permit fee. The discharge permit will be issued by the cabinet upon receipt of the total amount of the permit fee less the filing fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(c) Facilities which fall into multiple categories as specified in Section 2 of this regulation shall be assessed the highest fee.

(2) Each discharge permit fee will be determined by adding the base fee in paragraph (a) of this subsection to all other applicable component fees listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a discharge permit for any point source water pollutant shall depend on the type of wastewater treatment unit or facility and the required permit action. The amount of the base fee will be assessed according to the following schedule:

Facility Category	1st Issuance and Renewals New and Existing Facilities
Major industry	$1600 [$800]
Minor industry	1200 [500]
Non-process industry	450 [300]
Large non-POTW	1100 [400]
Intermediate non-POTW	650
Small non-POTW	350 [200]
Agriculture	200
Surface mining operation	350 [50]

(b) Component fees. The component fee for each addition necessary to complete the evaluation of the discharge permit shall be as follows:

1. Fees for major modifications of permits will be prorated based on the life of the permit in accordance with subsection (3) of this section. [Redraft permit based on agencies' comments - $ 80.]

2. Public hearing and CWA Section 301 (33 U.S.C Section 1311) technology-based variances - $325.

(3) The provisions of this section will apply with respect to fees for temporary discharge permits except that the fee as determined by subsection (2) of this section will be multiplied by the ratio of the length of time covered by the temporary discharge permit to five (5) years.

Section 5. Duplicate Discharge Permit Fee. Upon application for the issuance of a duplicate discharge permit, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen (15) dollar fee.

Section 6. Water Quality Variance Fee. (1) Any owner or operator granted a variance by the cabinet shall be assessed a variance fee. Upon determining that the variance can be granted, the cabinet shall notify the applicant and send a bill for the variance fee. Failure by the applicant to pay the variance fee on or before the due date shall result in the forfeiture of the filing fee and denial of the variance. The variance shall be granted by the cabinet upon receipt of the total amount of the variance fee less the filing fee.

(2) Variance fees shall be determined by adding the base fee in paragraph (a) of this subsection with the component fee, if applicable, listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a variance for any point source water pollutant shall be equal to $270, the cost of reviewing the feasibility of the variance request and reviewing the applicant's plan of study for the hydrologic-water quality investigation, assessment, or appraisal.

(b) Component fee. The component fee for completing an evaluation of a variance request shall be equal to $690, the cost of a technical review of the study data, results, and conclusions, and for making the variance recommendation.

Section 7. Terms of Payment. (1) Payment of a discharge permit or variance fee, and a duplicate discharge permit fee, as the case may be, will be made within thirty (30) days of the billing date.

(2) Payment of a filing fee shall accompany the application for a discharge permit or variance.

(3) With respect to all fees assessed in Sections 3, 4, 5, and 6 of this regulation, payment, if mailed, should be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

[Section 8. Date of Applicability. The provisions of this regulation will become effective upon the date of program approval.]

CHAROLOTTE E. BALDWIN

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at noon.

PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on November 21, 1985, at 10 a.m. in the Capital Plaza Tower. Any person interested in attending this hearing shall submit by November 16, 1985, a written statement of such interest to: A. Leon Smothers, Assistant Director, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601. If no statement of interest is received by close of business November 16, 1985, the hearing on this regulation may be cancelled. Written comments may also be submitted to the address above. Written comments will be accepted until the end of the comment period, which will be close of business on November 21, 1985.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: A. Leon Smothers

(1) Type and number of entities affected: The proposed amendment upwardly revises fees for discharge permits and variances for all sources identified by 401 KAR 5:060, Section 1 except publicly owned sources and sources permitted under a general permit. The proposed amendment also makes technical corrections to Section 2 and adds a classification to Section 2. Entities affected are those industries subject to 401 KAR 5:050 to 5:085 (KPDES); these entities number 2,194.

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

1. First year: Cost and cost increases for discharge permits are listed in the fee schedule as shown in Section 4(2)(a) of this regulation.

2. Continuing costs or savings: Continuing costs to a permittee are determined by the renewal frequency (permits may be renewed every five years) and/or the extent of modification to an existing facility.

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

(b) Reporting and paperwork requirements: No additional requirements

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The upward revision of the discharge permit fee schedule to levels based on

the average cost of permit application processing for each facility type (rounded to the nearest fifty dollars) is expected to generate a higher percentage of the funds necessary to cover administration of the KPDES program. The correction of the fee schedule also is expected to help forestall a potential budget shortfall in the Division of Water at the end of FY 1986.

2. Continuing costs or savings: The fee schedule revision is expected to generate sufficient funds for the KPDES program for the five year life of the permit.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: One new facility category is added.

(3) Assessment of anticipated effect on state and local revenues: The upward revision of the permit fee schedule is expected to have a positive effect on state revenue by offsetting unmet costs of the KPDES permit application process. The technical corrections have little impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to upwardly adjusting the discharge permit fee schedule are (1) no action (continuing general fund support at current levels) and (2) terminating the KPDES program and relegating the program's responsibilities to the U.S. Environmental Protection Agency (EPA). The no action option was rejected because the current fee schedule levels do not meet all costs of the permit application process. The administration of the discharge permit and variance program by EPA would substantially increase the cost of the program to the affected industries and decrease program efficiency. The proposed technical corrections can only be made by amending the existing regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

Tiering:
Was tiering applied? Yes.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:015. Documents incorporated by reference.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS Chapter 13A, 350.028, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to adopt regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for incorporation by reference of documents referred to in these regulations and other documents relied on by the cabinet in implementing the permanent regulatory program.

Section 1. Reclamation Advisory Memoranda. The following Reclamation Advisory Memoranda (RAM) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. Where there is a conflict between these documents on a particular item, the document of later date shall prevail.

(1) RAM No. 33, "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982.

(2) RAM No. 35, "Permanent Program Transition Application," May 14, 1982.

(3) RAM No. 46, "Status Report on Transition Application Review," August 25, 1982.

(4) RAM No. 48, "Lands Unsuitable for Mining Program Information Resource Center," September 14, 1982.

(5) RAM No. 53, "Procedures and Priorities for Review of Transition Comprehensive Applications," November 17, 1982.

(6) RAM No. 55, "Initial Completeness Requirements for Transition Comprehensive Applications," December 1, 1982.

(7) RAM No. 56, "Overlapping Permits," December 1, 1982.

(8) RAM No. 57, "Applicant Changes to Transition Applications," December 1, 1982.

(9) RAM No. 58, "Priority I Deadline for Sediment Structure Compliance Demonstrations," February 14, 1983.

(10) RAM No. 62, "Extension of Priority II Technical Submission Date," April 12, 1983.

(11) RAM No. 63, "Submission of Sediment Structure Compliance Demonstration Data and Other Technical Data," April 22, 1983.

[(12) RAM No. 64, "Certificates of Liability Insurance Update," June 10, 1983.]

(12) [(13)] RAM No. 65, "Submission of Transitioned Application, Priority II, III, and IV Applications," June 10, 1983.

(13) [(14)] RAM No. 66, "Submission of Sediment Pond Compliance Demonstrations for Priority I Transitioning Permits," August 5, 1983.

(14) [(15)] RAM No. 68, "Submission of Priority II Data," September 23, 1983.

(15) [(16)] RAM No. 72, "Submission of Technically Complete Applications, Priority III and IV," November 29, 1983.

(16) [(17)] RAM No. 73, "Delayed Filing of Performance Bonds on Technically Acceptable Applications for Transitioning Permanent Program Permits," February 6, 1984.

(17) [(18)] RAM No. 75, "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(18) [(19)] RAM No. 76, "Revision to RAM No. 73: Maximum Period of Bond Deferral Reduced from 5 Years to 3 Years," April 2, 1984.

(19) [(20)] RAM No. 77, "Reinstatement of Small Operator Assistance," April 2, 1984.

(20) [(21)] RAM No. 78, "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

Section 2. Technical Reclamation Memoranda. The following Technical Reclamation Memoranda (TRM) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet.

(1) TRM No. 1, "Existing Structures," October 22, 1982.

(2) TRM No. 9, "Revegetation Standards for

Success," February 1, 1983.

Section 3. Penalty Assessment Manual. The following document issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. "Penalty Assessment Manual," July 1983.

Section 4. Documents Referred to Within These Regulations. The following documents which are referred to within 405 KAR Chapters 7 through 24 are incorporated by reference for the purposes of 405 KAR Chapters 7 through 24.

(1) "Standard Methods for the Examination of Water and Wastewater," fourteenth edition, 1976. Prepared by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies may be obtained from American Public Health Association, 1015 Eighteenth Street NW, Washington, D.C. 20036.

(2) "Methods for Chemical Analysis of Water and Wastes," March 1979, U.S. Environmental Protection Agency. Copies may be obtained from U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

(3) "Soil Taxonomy," Agriculture Handbook 436, 1975, U.S.D.A. - Soil Conservation Service. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(4) "Soil Survey Manual," Agriculture Handbook No. 18, 1951, U.S. Department of Agriculture. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) "ASTM STANDARD D388-77, Standard Specification for Classification of Coal by Rank," 1977, American Society for Testing and Materials. Copies may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(6) "Environmental Criteria for Electric Transmission Lines," 1970, U.S. Department of the Interior, U.S. Department of Agriculture. Copies may be obtained from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(7) REA Bulletin 61-10, "Protection of Bald and Golden Eagles from Powerlines," 1972 U.S. Department of Agriculture. Copies may be obtained from the U.S. Department of Agriculture, Washington, D.C.

(8) Technical Release No. 60, "Earth Dams and Reservoirs," 1976, U.S.D.A.--Soil Conservation Service. Copies may be obtained from U.S. Soil Conservation Service, Washington, D.C.

(9) "Kentucky Standard and Specification for Pond (378)," 1978, U.S. Soil Conservation Service. Copies may be obtained from the Soil Conservation Service, 333 Waller Ave., Lexington, KY.

(10) ANSI S1.4-1971, "Specification for Sound Level Meters," 1971, American National Standards Institute, Inc. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY.

(11) AASHTO T99-74, "Standard Methods of Test for the Moisture-Density Relations of Soils Using 5.5 lb. (2.5 Kg) Rammer and a twelve (12) in. (305 mm) Drop," 1974, American Association of State Highway and Transportation Officials. Copies may be obtained from American Association of State Highway and Transportation Officials, 444 N. Capitol Ave., Washington, D.C. 20001.

Section 5. Permit Application Review Procedures. The following Permit Application Review Procedures (PARP) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet.

(1) PARP No. 2, "Lands within 100 feet, measured horizontally, of a cemetery," April 18, 1983.

(2) PARP No. 6, "Advertising Schedule Variance," July 29, 1983.

(3) PARP No. 11, "Condition of Issuance for Transitioning Underground Permits," November 15, 1983.

Section 6. Policy Memorandum. The following policy memorandum issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. Departmental Policy Memorandum No. 81-003, "Conflict of Interest," June 19, 1981.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 27, 1985 at 10 a.m. in room G-1 of the Capital Plaza Tower. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: Pursuant to Section 1 of 1 KAR 1:010, this regulation incorporates, by reference, procedural and technical documents pertinent to KAR Title 405, Chapters 7-24. In that regard, this regulation affects all persons who hold permanent-program permits to conduct surface coal mining and reclamation operations (excluding those affecting areas which are two acres or less in size) under this title. (Approximately 2,400 such operations have been permitted under Kentucky's permanent regulatory program for coal mining operations.)

By affecting those persons identified above, this regulation also affects, directly or indirectly and in varying degrees, persons living in, or with interests in, the coal field regions of Kentucky.

Due to the nature of the amendments proposed to this regulation (see section (6) of this analysis), the persons noted above will be affected in varying degrees by these amendments. However, these amendments will have direct impacts on insurers, permittees and applicants who must have public liability insurance policies, and persons affected by the existence of these insurance policies.

(a) Direct and indirect costs or savings to

those affected:

1. First year: As discussed in section (6), under the proposed amendments permittees and applicants will be obtaining insurance policies which provide combined coverage for bodily injury and property damage, rather than the separate-coverage policies which are currently required. Typically, the premium for an insurance policy with combined coverage is lower than for one with separate coverage (assuming identical amounts and facets of coverage). Therefore, permittees and applicants will be acquiring insurance policies with lower premiums than those policies currently required.

For applicants obtaining insurance after January 1986, policies which provide combined coverage will be the only viable option for the required liability insurance. Persons with valid permanent-program permits will also be obtaining combined-coverage policies to replace their current, separate-coverage policies, and most of these replacement policies should be acquired within one (1) year of the effective date of these amendments.

2. Continuing costs or savings: See section (1)(a)1.

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

(b) Reporting and paperwork requirements: The cabinet anticipates minor, temporary increases in paperwork and reporting requirements, as a result of these amendments. Primarily, these increases will be related to permittees obtaining replacement policies for existing permits and submitting, to the Department for Surface Mining Reclamation and Enforcement, replacement certificates of liability insurance for such policies. After all replacement policies have been obtained and all replacement certificates have been filed with the DSMRE, the reporting and paperwork requirements for liability insurance should return to their previous levels.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet anticipates minor, temporary increases in the department's filing costs, as a result of these amendments. These costs will be incurred because of the increased filing workload associated with the submission of replacement certificates of liability insurance as discussed in section (1)(b). After all replacement certificates have been filed, the DSMRE's costs associated with the liability insurance requirements should return to their previous levels.

2. Continuing costs or savings: See section (2)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See sections (1)(b) and (2)(a)1.

(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: Currently, 405 KAR 7:015 and 405 KAR 10:030 require that persons issued permanent-program permits (excluding two-acre permits as discussed in section (1) of this analysis) be insured with public liability insurance policies. These regulations currently require that these policies provide separate coverage for property damage and bodily injury.

As of January 1986, policies which provide separate coverage for property damage and bodily injury will no longer be available to permittees and applicants. Instead, only policies which combine the two facets of coverage will be available. The proposed amendments to this regulation, coupled with the proposed revisions to the insurance requirements of 405 KAR 10:030, will allow permittees and applicants to obtain these combined-coverage policies to satisfy their insurance requirements under the surface mining laws and regulations of both the United States and Kentucky.

As previously noted, the modified insurance requirements are necessary due to changes in the availability of separate-coverage policies. It should be noted, however, that although they will allow the use of combined-coverage policies in lieu of policies which provide separate coverage, the amendments will also alter the minimum amounts of the effective insurance coverage. Currently, permittees are required to have policies which provide coverage in the following amounts: $300,000 for bodily injury (each occurrence), $300,000 for property damage (each occurrence), $500,000 for bodily injury (aggregate), and $500,000 for property damage (aggregate). The proposed amendments will allow the use of policies which provide coverage of $300,000 for each occurrence and $500,000 aggregate for combined bodily injury and property damage.

The substantive amendments to this regulation delete, from the Title 405 regulations, the incorporation by reference of a Reclamation Advisory Memorandum which addresses insurance requirements for coal mining operations. The cabinet has modified these insurance requirements as discussed above and has proposed to include the revised requirements, which are consistent with federal requirements, within the body of 405 KAR 10:030.

Tiering:
Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, pursuant to the federal and Kentucky surface mining laws and regulations, apply equally to all applicants and permittees under Title 405, Chapters 7-24.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:090. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990

PURSUANT TO: KRS Chapter 13A, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610

NECESSITY AND FUNCTION: KRS Chapter 350 in

pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the cabinet for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations on performance bond amount, duration, release, and forfeiture; and all other matters which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration as set forth in KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this regulation.

Section 3. Proposed Penalty Assessment. (1) The cabinet shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel within the Department of Surface Mining Reclamation and Enforcement.

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.

(3)(a) The cabinet shall mail, postage prepaid, its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person to whom the notice or order was issued or that person's representative, within fifteen (15) working days after issuance of the final notice of inspection of noncompliance.

(b) Failure by the cabinet to serve any proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. Proves actual and substantial prejudice as a result of the delay; and

2. Makes a timely written objection to the delay. An objection shall be timely only if made on or before the date of the preliminary hearing, or if the preliminary hearing is waived, on or before the date of the formal hearing.

(4)(a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the violation or the assessment shall pay the proposed penalty assessment in full to the cabinet within thirty (30) days from the date of mailing of the assessment.

(b) The person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by attending the preliminary hearing scheduled pursuant to Section 4 of this regulation or by requesting a formal hearing in writing pursuant to Section 5(1)(b) of this regulation. Prepayment of penalties shall be made as provided therein.

Section 4. Preliminary Hearings. (1) Following issuance by the cabinet of a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the cabinet shall schedule a preliminary hearing on the fact of the violation and the proposed penalty assessment unless such hearing is waived by the person to whom the notice or order was issued. The preliminary hearing shall be scheduled for a date no later than sixty (60) days after the date of mailing of the proposed penalty assessment: Provided that, where the preliminary hearing is to consider a notice or order requiring cessation of mining by a permittee, such hearings shall be held within thirty (30) days of the issuance of such notice or order. Failure by the cabinet to schedule a hearing for a date within sixty (60) days or to hold a hearing concerning a notice or order requiring cessation of mining within thirty (30) days, respectively, shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the preliminary hearing had proves actual and substantial prejudice as a result of the delay. The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be served in accordance with Section 6 of this regulation. Notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the preliminary hearing at the regional office closest to the mine site at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3 of this regulation for mailing of the proposed penalty assessment, the cabinet may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing. If such person waives the preliminary hearing, the payment provisions of subsection (6) of this section shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to affirm, terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary

hearing is held, the hearing officer shall file his or her preliminary determination with the cabinet. Upon receipt, the cabinet shall immediately mail, postage prepaid notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was issued may, within thirty (30) days of the mailing of the proposed penalty assessment, waive the preliminary hearing in writing and request a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person must forward to the cabinet an amount equal to the proposed penalty assessment for placement into an escrow account, within thirty (30) days after mailing of the proposed assessment.

(7)(a) An authorized representative of the cabinet shall attend the preliminary hearings.

(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) of this section, he or she shall be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the cabinet shall enter a final order containing the findings set forth in subsection (10) of this section.

(8) If an agreement is reached at the preliminary hearing, the cabinet shall present the terms of the agreement to the hearing officer and shall present in person or mail, postage prepaid, a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the cabinet within ten (10) days of the date on which it was mailed. If the signed settlement agreement is returned more than ten (10) days after its presentation or mailing, it may be voided at the cabinet's discretion. The parties to the agreement will be deemed to have waived their rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement, including a statement of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after the signing of the settlement agreement. If the matter is not settled, the hearing officer shall issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of subsection (9) of this section shall apply.

(9) If no agreement is reached, any party may, within thirty (30) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the cabinet, to be held in escrow. If the cabinet is the party requesting a formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the cabinet pursuant to subsection (10) of this section.

(10) Failure to request a formal hearing in a timely manner shall be considered an admission of the fact of the violation and acceptance of the proposed penalty assessment. If no request for a formal hearing is made within thirty (30) days after the mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail a final order finding:

(a) That the person has waived his or her right to a hearing;

(b) That the findings and conclusions contained in the preliminary determination of the hearing officer are admitted; and

(c) That the penalty assessment contained in the preliminary determination of the hearing officer is due and payable to the cabinet within thirty (30) days, after mailing of the final order.

(11) No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same matter or participate in any further decision or any subsequent administrative appeal.

Section 5. Formal hearing. (1) Requests for formal hearing by persons other than the cabinet:

(a) Except as provided in paragraph (b) of this subsection, any person aggrieved by an order or determination of the cabinet may request in writing, pursuant to KRS 224.081(2), that a hearing be conducted by the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had such notice.

(b) Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the cabinet and pay the proposed penalty assessment into escrow pursuant to Section 4(6) or Section 4(9) of this regulation. Such request shall be filed with the Docket Coordinator, Office of General Counsel, at the cabinet's central office in Frankfort. The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

(2) Initiation of formal hearing by the cabinet.

(a) The cabinet may initiate a formal hearing and may seek revocation or suspension of the permit and forfeiture of the bond whenever:

1. It has reason to believe that a violation of KRS Chapter 350 or Title 405, Chapters 7 trough 24 has occurred or is occurring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The cabinet chooses to contest a preliminary hearing determination; or

4. The provisions of KRS 350.990(9) apply; or

5. The cabinet has reason to believe that

additional remedies should be sought or that an order should be entered against any person to protect the environment or the health and safety of the public; or

6. The criteria of 405 KAR 10:050, Section 3(2) apply.

(b) The cabinet shall initiate a formal hearing and shall pursue revocation or suspension of the permit and forfeiture of the bond whenever:

1. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

2. The cabinet has determined, pursuant to paragraph (c)1 of this subsection, that a pattern of violations of any requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit conditions exists or has existed, and that the violations were caused by the permittee willfully, or through unwarranted failure to comply with those requirements or conditions; or

3. The criteria of 405 KAR 10:050, Section 3(1) apply.

(c) Pattern of violations.

1. The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

a. The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions;

b. The number of violations, sited on more than one (1) occasion of different requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions; and

c. The extent to which the violations were isolated departures from lawful conduct.

2. The cabinet shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the cabinet determines that a pattern of violations exists or has existed, the cabinet shall request a formal hearing pursuant to subsection (2) of this section.

3. In determining the number of violations within any twelve (12) month period, the cabinet shall consider only violations issued as a result of inspections carried out on or after May 3, 1978. The cabinet may not consider violations issued as a result of other inspections in determining whether to exercise its discretion under paragraph (c)1 of this subsection, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

4. Whenever a permittee fails to abate a violation contained in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this subsection and shall initiate a formal hearing as provided in this section.

(3) At any formal hearing held pursuant to Section 5(1) or (2) of this regulation to which it is a party, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or
ailed or refused to comply with any final order; and

(f) Any and all other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit or exploration approval, the permittee shall immediately cease surface coal mining operations on the permit area shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(5) If a final order of the cabinet has been issued after a preliminary hearing, any issues adjudicated by such order shall be conclusive as between the parties to that hearing and shall not be readjudicated at any subsequent formal hearing between the same parties.

(6) Administrative summons. Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2), the cabinet shall schedule a hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period. The administrative summons, including a notice of hearing, shall be served in accordance with Section 6 of this regulation; and shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for granting of the hearing. For all formal hearings initiated pursuant to Section 5(2) of this regulation, notice shall also be mailed to any intervenors, shall be posted at the appropriate regional office of the cabinet and, if practicable, notice shall be published in a newspaper of general circulation in the area of the surface coal mining operation or coal exploration operation.

(7) Prior to a formal hearing, and upon seven (7) days' written notice to all parties, the hearing office may hold a pre-hearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, or default for non-appearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(8) All formal hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order

of the cabinet following a preliminary hearing shall be binding against any party or parties to the preliminary hearing leading to the final order. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing office shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer or court reporter. Provisions of 400 KAR 1:030, 400 KAR 1:040, and 400 KAR 1:050 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and these regulations. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order of the hearing officer shall be grounds for a default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited an the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended orders, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. When certified as a true and correct copy of the testimony by the cabinet, the transcript shall constitute the official transcript of the evidence.

(11) The hearing officer shall make a determination after hearing and based on a preponderance of the evidence appearing in the record as a whole, setting forth whether the violation did in fact occur, the amount of the penalty recommended by the hearing officer, and remedial or compliance actions recommended to be taken by the permittee. The hearing officer may recommend suspension or revocation of a permit or forfeiture of a bond if a permittee has violated any provision of KRS Chapter 350 or Title 405, any permit condition or final order, including failure to pay a civil penalty assessed in a final order of the cabinet. The hearing officer shall recommend revocation of a permit and forfeiture of a bond if the permittee has demonstrated a pattern of violations or willfully failed to comply with an order for cessation and immediate compliance or the conditions of 405 KAR 10:050, Section 3(1) are met. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130 that a person or persons should not be eligible to receive another permit or conduct future operations. The hearing officer may recommend that a person or permittee be required to abate, repair, alleviate or prevent violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or any permit condition, which violations are found to exist on the basis of a preponderance of the evidence.

(12) Subject to Section 5(5) of this regulation, the hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth in Section 3(2) of this regulation for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(13) Except as provided in Section 9 of this regulation for permit hearings, the hearing officer shall, within thirty (30) days of the close of the hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall mail, postage prepaid, a copy of his report and recommended order to all parties. The parties may file within seven (7) days of mailing of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If any extension of time is granted by the secretary for a hearing officer to complete his report, the

cabinet shall notify all parties at the time of the granting of the extension.

(16) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall be no ex-parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.085 and 350.032(2).

Section 6. Service. Any proposed penalty assessment, notice of preliminary hearing, notice of formal hearing or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(1) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (3) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal government offices to accept and sign for 'addressee only' mail, signature by such authorized representative shall constitute service on the addressee; or

(2) The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute or rule, other than by subsection [paragraph] (1) of this section [subsection], to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(3) As an alternative to other methods of service specified by statute or regulation, service of process may be made upon a person issued a permit by the cabinet or upon a person who has submitted an exploration notice pursuant to 405 KAR 8:020 by placing in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee as specified on the face of the permit at the permanent address specified in the permit application or by the permittee. Service is effective upon acceptance of the document by any person at the permanent address, upon refusal to accept the document by any person at the permanent address, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, or failure to claim the document.

(4) The methods of service specified by this regulation shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

Section 7. Location of Hearings. Preliminary hearings and formal hearings shall, upon written request filed within fifteen (15) days of the mailing of the proposed penalty assessment, by the cabinet or the operator to whom the notice or order was issued, be held at or reasonably close to the mines site, or at any other location acceptable to the parties. The appropriate regional office of the cabinet nearest to the mine site shall be deemed reasonably close unless a closer location is requested by the cabinet or the operator and agreed to by the hearing officer in his or her discretion.

Section 8. Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may, subject to review by the secretary, grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020 or permit determination of the cabinet. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the cabinet will be favorable to such person; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet.

Section 9. Review of Permit and Coal Exploration Determinations. Review of determinations by the cabinet on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration shall be conducted pursuant to this regulation, provided that the cabinet shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1). The burden of proof shall be on the party seeking to reverse the determination of the cabinet. Temporary relief may be requested pursuant to Section 8 of this regulation.

Section 10. Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the cabinet shall, as soon as possible, not to exceed then (10) days thereafter, provided the person the whom the order was issued an opportunity to be heard. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

Section 11. Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350, Title 405, Chapters 7 through 24, or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) Such penalty for the failure to abate the violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 8 of this regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the cabinet issues its final order concerning the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or regulations promulgated pursuant thereto, or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Cabinet for Human Resources and Environmental Protection by the cabinet's office of general counsel, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If no judicial review is sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the cabinet or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the cabinet or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 12. Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or

may be adversely affected.

(3) [Unless the petitioner's interest is adequately represented by existing parties,] The hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(4) If neither paragraph (a) nor paragraph (b) of subsection (3) above applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the cabinet, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 13. Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any proceeding held pursuant to this regulation which results in a final order of the cabinet.

(2) The petition for an award of costs and expenses, including attorneys' fees. must be filed with the cabinet within forty-five (45) days of receipt of the final order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, Title 405, or permit conditions or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To any person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated a formal hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under this regulation or participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that any person applied for review pursuant to this regulation or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 14. Judicial Review. The commencement of proceedings for judicial review of any determination of the cabinet shall not operate as a stay of the final order of the cabinet, unless specifically ordered by the court.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WITH LRC: October 15, 1985 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 27, 1985 at 10 a.m. in room G-1 of the Capital Plaza Tower. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation establishes the hearing, notice, penalty assessment, and other procedural and due process provisions for Kentucky's permanent regulatory program for coal mining operations. In that regard, this regulation affects all persons involved in and with interest in such procedural and due process matters.

The substantive amendments proposed for this regulation (see section (6) of this analysis) will affect persons (e.g., environmental groups, citizens, and permittees) seeking to intervene in administrative hearings and other parties involved in such hearings, and persons (e.g., permittees) involved in situations in which the cabinet takes an action on a permittee who has not abated a violation within 30 days following the close of the designated abatement period.

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

1. First year: Additional costs (e.g., travel expenses) may be incurred by persons who are allowed, as a result of the proposed amendments, to intervene in proceedings; however, the intervention is a right and is not a mandatory requirement. Also, some additional costs may be incurred by persons already parties to the proceedings (e.g., additional service expenses and costs of responding to additional pleadings).

With regard to the actions performed by the cabinet after expiration of an abatement period, the proposed amendments specify the types of actions which the cabinet will take, and the specificity of the proposed amendments only clarifies current, somewhat vague, language. No change in regulatory intent is proposed.

2. Continuing costs or savings: See section (1)(a)1.

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

(b) Reporting and paperwork requirements: Minor increases in paperwork and reporting requirements will occur because of the provisions of the proposed amendments, primarily due to the participation of more parties in administrative actions.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet anticipates minor increases in the length and complexity of legal proceedings as a result of the proposed amendments. Minor additional expenses will be attendant to the more involved legal actions and additional parties.

2. Continuing costs or savings: See section (2)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minor increases in paperwork and reporting requirements will occur because of the provisions of the proposed amendments, primarily due to the participation of more parties in administrative actions.

(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: The substantive amendments proposed for this regulation address two issues: intervention in legal proceedings and the cabinet's actions when a permittee has not abated a violation within 30 days of the close of the designated abatement period.

The amendments to the issue regarding intervention will remove, from the current regulation, the provision which allows a hearing officer to deny intervention if he determines that a petitioner's interest in already adequately represented. The proposed amendments to this issue are consistent with federal requirements and are necessary to fulfill a requirement of the final judgment and order of the U.S. District Court in Sierra Club et al. vs. Watt et al., Civil Action No. 82-30.

The amendments to the appropriate-action issue simply clarify current, somewhat ambiguous language. These amendments are necessary to correct deficiencies in the current regulation as cited by the Office of Surface Mining.

Tiering:
Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, pursuant to the federal and Kentucky surface mining laws and regulations, apply equally to all applicants and permittees under Title 405, Chapters 7-24.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to specify types, terms, and conditions for performance bonds and liability insurance. This regulation sets forth the various types and conditions which the cabinet will accept in satisfaction of the bonding requirements. This regulation sets forth that bonds shall be payable to the cabinet and other conditions. This regulation specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon which the cabinet will accept them. This regulation specifies the terms and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A collateral bond; or

(c) A combination of these bonding types.

Section 2. Terms and Conditions of Performance

Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.

(2) The performance bond shall be payable to the cabinet as a penal sum.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to 405 KAR 10:010, Section 3(2).

(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, Section 3.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancellable by the surety at any time for any reason including, but not limited to, non-payment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not affected may be cancelled with the written approval of the cabinet; provided, the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or the permit has been revised so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020 and the remaining performance bond liability.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c) The bond shall provide that:

1. The surety will give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business;

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, written notice shall be given promptly to the permittee and the cabinet;

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without bond coverage in violation of 405 KAR 10:010, Section 2(1). The cabinet shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.

(6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit for a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand.

(d) The letter of credit shall provide that:

1. The issuer will give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of 405 KAR 10:010, Section 2(1). The cabinet shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation"

under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order of cessation and immediate compliance shall be issued.

Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 4. Terms and Conditions for Liability Insurance. (1) The applicant shall submit, as a part of the [at the time of] permit application at the time of bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying [proof] that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certification shall be on a form prescribed by the cabinet. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from [persons injured or property damaged as a result of] surface coal mining and reclamation operations, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate [; and minimum insurance coverage for property damage shall be $300,000 for each occurrence and $500,000 aggregate].

(2) The policy shall be maintained in full force during the term of the permit or any renewal thereof, and during the liability period necessary to complete [including completion of] all reclamation operations under Title 405, Chapters 7 through 24.

(3) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew.

(4) Upon the incapacity of an insurer by reason of bankruptcy, insolvency or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage in violation of this section. The cabinet shall issue a notice of noncompliance against any permittee who is without insurance coverage. The notice shall specify a reasonable period to replace such coverage, not to exceed ninety (90) days. During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: October 15, 1985
FILED WITH LRC: October 15, 1985 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 27, 1985 at 10 a.m. in room G-1 of the Capital Plaza Tower. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk
(1) Type and number of entities affected: This regulation sets forth the types, terms, and conditions of performance bonds and liability insurance policies. In that regard, this regulation affects all persons who hold permanent-program permits to conduct surface coal mining and reclamation operations (excluding those affecting areas which are two acres or less in size) under this title. (Approximately 2,400 such operations have been permitted under Kentucky's permanent regulatory program for coal mining operations.)

By affecting those persons identified above, this regulation also affects, directly or indirectly and in varying degrees, persons living in, or with interests in, the coal field regions of Kentucky.

Due to the nature of the amendments proposed to this regulation (see section (6) of this analysis), the persons noted above will be affected in varying degrees by these amendments. However, these amendments will have direct impacts on insurers, permittees and applicants who must have public liability insurance policies, and persons affected by the existence of these insurance policies.

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

1. First year: As discussed in section (6), under the proposed amendments permittees and applicants will be obtaining insurance policies which provide combined coverage for bodily injury and property damage, rather than the separate-coverage policies which are currently required. Typically, the premium for an insurance policy with combined coverage is lower than for one with separate coverage (assuming identical amounts and facets of coverage). Therefore, permittees and applicants will be acquiring insurance policies with lower premiums than those policies currently required.

For applicants obtaining insurance after January 1986, policies which provide combined coverage will be the only viable option for the required liability insurance. Persons with valid permanent-program permits will also be obtaining combined-coverage policies to replace their current, separate-coverage policies, and most of these replacement policies should be acquired within one (1) year of the effective date of these amendments.

2. Continuing costs or savings: See section (1)(a)1.

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

(b) Reporting and paperwork requirements: The cabinet anticipates minor, temporary increases in paperwork and reporting requirements, as a result of these amendments. Primarily, these increases will be related to permittees obtaining replacement policies for existing permits and submitting, to the Department for Surface Mining Reclamation and Enforcement, replacement certificates of liability insurance for such policies. After all replacement policies have been obtained and all replacement certificates have been filed with the DSMRE, the reporting and paperwork requirements for liability insurance should return to their previous levels.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet anticipates minor, temporary increases in the department's filing costs, as a result of these amendments. These costs will be incurred because of the increased filing workload associated with the submission of replacement certificates of liability insurance as discussed in section (1)(b). After all replacement certificates have been filed, the DSMRE's costs associated with the liability insurance requirements should return to their previous levels.

2. Continuing costs or savings: See section (2)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See sections (1)(b) and (2)(a)1.

(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: Currently, 405 KAR 7:015 and 405 KAR 10:030 require that persons issued permanent-program permits (excluding two-acre permits as discussed in section (1) of this analysis) be insured with public liability insurance policies. These regulations currently require that these policies provide separate coverage for property damage and bodily injury.

As of January 1986, policies which provide separate coverage for property damage and bodily injury will no longer be available to permittees and applicants. Instead, only policies which combine the two facets of coverage will be available. The proposed amendments to this regulation, coupled with the proposed revisions to 405 KAR 7:015, will allow permittees and applicants to obtain these combined-coverage policies to satisfy their insurance requirements under the surface mining laws and regulations of both the United States and Kentucky.

As previously noted, the modified insurance requirements are necessary due to changes in the availability of separate-coverage policies. It should be noted, however, that although they will allow the use of combined-coverage policies in lieu of policies which provide separate coverage, the amendments will also alter the minimum amounts of the effective insurance coverage. Currently, permittees are required to have policies which provide coverage in the following amounts: $300,000 for bodily injury (each occurrence), $300,000 for property damage (each occurrence), $500,000 for bodily injury (aggregate), and $500,000 for property damage (aggregate). The proposed amendments will allow the use of policies which provide coverage of $300,000 for each occurrence and $500,000 aggregate for combined bodily injury and property damage.

The substantive amendments to this regulation incorporate, consistent with current, federal regulations, insurance requirements which have been modified from those identified in the DSMRE's Reclamation Advisory Memorandum 64 (RAM 64). By a separate rulemaking, the cabinet has proposed to delete RAM 64, which is currently incorporated by reference into 405 KAR 7:015, from the permanent regulatory program - thereby eliminating the conflicts and inconsistencies between RAM 64 and the modified insurance requirements.

Tiering:
Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, pursuant to the federal and Kentucky surface mining laws and regulations, apply equally to all applicants and permittees under Title 405, Chapters 7-24.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations.

RELATES TO: KRS 350.465(2)(b), 350.610

PURSUANT TO: KRS Chapter 13A, 350.465(2), 350.610

NECESSITY AND FUNCTION: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This regulation sets forth procedures and criteria for reviewing petitions seeking designation of lands as unsuitable for all or certain types of coal mining operations and for the termination of designations.

Section 1. General. The following procedures and criteria establish a process enabling objective decisions to be made on which land

areas, if any, are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. (1) Petitions for designating lands as unsuitable for all or certain surface coal mining operations will not be considered for:

(a) Lands on which surface coal mining operations were being conducted on August 3, 1977;

(b) Lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(6);

(c) Lands where substantial legal and financial commitments were in existence prior to January 4, 1977 in such surface coal mining operations.

(2) (a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

[(2) Determination of "substantial legal and financial commitments." The costs of acquiring the coal in place or the right to mine such coal will not alone constitute a substantial legal and financial commitment in the absence of an existing mine. Factors to be considered will include, but not be limited to, the following:]

[(a) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on the improvement or modification of coal lands within, for access to, or in support to surface coal mining operations in the petitioned area.]

[(b) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on capital equipment within, for access to, or in support of surface coal mining operations in the petitioned area.]

[(c) The actual expenditure of substantial monies or the execution of a valid and binding contract for substantive monies on exploration, mapping, surveying, and geological work, as well as engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations.]

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the cabinet shall notify the petitioner by certified mail whether or not the petition is complete. A petition shall be deemed incomplete if the cabinet finds that the petition does not contain all information required by 405 KAR 24:020, Sections 3 and 4.

(2) If the cabinet determines that the petition is incomplete, it shall be returned to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(3) The cabinet shall determine whether any identified coal resources exist in the area described in the petition. Should the cabinet find that there are not identified coal resources in that area, the petition shall be returned to the petitioner with a statement of findings.

(4) The cabinet may reject petitions for designations or terminations which are found to be frivolous. If the cabinet finds that the petition is frivolous, it shall return the petition to the petitioner with a written statement of the reasons for the determinations.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the cabinet shall determine if the new petition presents substantial new allegations of facts and objective evidence. If the petition does not contain new and substantial allegations of facts, the cabinet shall return the petition with a statement of its findings and a reference to the record of the previous designation proceedings.

(6) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the cabinet from issuing a decision on that permit application. The cabinet may return such a petition to the petitioner with a statement of why the cabinet will not consider the petition. For the purposes of this regulation, the close of the public comment period shall mean at the close of the period for filing written comments and objections under 405 KAR 8:010, Sections 9 and 10.

Section 4. Notification and Request for Information. (1) The cabinet shall periodically notify the petitioner of applications for a permit received which propose to include any area covered by the petition. The cabinet shall begin this notification procedure only after it has determined that the petition is complete and has so notified the petitioner.

(2) Within twenty-one (21) days after the determination that a petition is complete, the cabinet shall circulate copies of the petition form to, and request submission of relevant information from:

(a) Other interested government agencies;

(b) Areawide development district agencies;

(c) The petitioner;

(d) Intervenors; and

(e) Other persons known to the cabinet to have an interest in the property.

(3) Within twenty-one (21) days after the

determination that a petition is complete, the cabinet shall notify the general public of the receipt of the petition by a newspaper advertisement. The notice shall identify the petitioner and provide the mailing address of the petitioner. The notice shall request submissions of relevant information and shall request that persons with an ownership or other interest of record in the property covered by the petition who wish to be notified of any hearing identify themselves t the cabinet. The advertisement shall be placed once a week for two (2) consecutive weeks:

(a) In the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county of the area covered by the petition; and

(b) In the newspaper of largest circulation in the state.

(4) Until three (3) days before the cabinet holds a public hearing on the petition pursuant to Section 7 of this regulation, any person may intervene in the preceeding, by filing:

(a) The intervenor's name, address, telephone number, and notarized signature;

(b) Identification of the intervenor's interest which is or may be adversely affected;

(c) A short statement identifying the petition;

(d) Allegations of fact and objective evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Data Base and Inventory System. (1) the cabinet will develop and maintain a data base and inventory system which will permit evaluation of reclamation feasibility in areas covered by petition.

(2) The cabinet will include in the data base and inventory system, information relevant to the criteria in Section 8 of this regulation.

(3) The cabinet will include in the data base and inventory system sufficient information to prepare the statements required in Section 8(4), including information on:

(a) The coal sources of Kentucky;

(b) The demand for Kentucky coal;

(c) The supply of Kentucky coal;

(d) The economy of Kentucky and its coal mining regions; and

(e) The environment and natural resources of Kentucky.

(4) The cabinet will include in the data base and inventory system relevant information that comes available from petitions, publications, studies, experiments, permit applications, surface coal mining operations, and other sources. The cabinet will also include relevant information received from the U.S. Fish and Wildlife Service, the Kentucky Heritage Commission, and the cabinet's Division of Air Pollution Control.

Section 6. Public Information. (1) Beginning immediately after the cabinet determines that a petition is complete, it shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the cabinet. This record shall be maintained at the central office of the department in Frankfort and the regional office within whose district the petition site is located.

(2) The cabinet shall make the record, data base and information system available for public inspection, pursuant to KRS 61.870 et seq.

(3) The cabinet shall provide information on the petition procedures necessary to designate (or terminate a designation of) an area as unsuitable for surface coal mining operations.

(4) The cabinet shall describe how the inventory and data base can be used.

Section 7. Hearing Requirements. (1) Within ten (10) months after receipt of a complete petition, the cabinet shall hold a public hearing in the locality of the area covered by the petition; provided that when a permit application is pending before the cabinet and such application involves an area in a petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. If all petitioners and intervenors agree, the hearing need not beheld. The hearing shall be legislative in nature, without cross-examination of witnesses. The cabinet shall make a verbatim record of the hearing.

(2) The cabinet shall give notice of the date, time, and location of the hearing to:

(a) Local, areawide, state, and federal agencies which may have an interest in the decision on the petition;

(b) The petitioner and the intervenors; and

(c) Any person with an ownership or other interest in the area covered by the petition who has identified himself or herself to the cabinet as set forth in Section 4(3) or who is otherwise actually known to the cabinet.

(3) Notice of the hearing shall be sent by certified mail to the petitioner and any intervenors and by regulate mail to the persons designated in subsection (2)(a) and (c) of this section, and be postmarked not less than thirty (30) days before the scheduled date of the hearing.

(4) The cabinet shall notify the general public of the date, time, and location of the hearing by placing an advertisement in the newspaper of largest circulation according to the definition in KRS 424.110 to 424.120, in the county of the are covered by the petition once a week for two (2) consecutive weeks and during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must be published four (4) and five (5) weeks before the scheduled date of the public hearing.

(5) The cabinet may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(6) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

Section 8. Criteria and Decision. (1) The cabinet shall designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it determines that reclamation is not technologically and economically feasible under the performance standards of Title 405, Chapters 7 through 24 at the time of designation.

(2) The cabinet may designate an area as unsuitable for all or certain types of surface coal mining operations if, upon petition, it is determined that the surface coal mining operations will:

(a) Be incompatible with existing land use policies, plans, or programs adopted by state, areawide, or local agencies with management

responsibilities for the areas which would be affect by such surface coal mining operations;

(b) Affect fragile or historic lands in which the surface coal mining and reclamation operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(c) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range availability of water supplies;

(d) Affect renewable resource lands in which the surface coal mining operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; or

(e) Affect natural hazard lands in which the surface coal mining operations could substantially endanger life and property.

(3) If the cabinet does not designate a petitioned area under subsection (2) of this section, the secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of surface coal mining operations on the feature that was the subject of the petition.

(4) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement, using existing and available information, on the potential coal resources of the area, the effect of the action on demand for, and supply of, Kentucky coal, and the environmental and economic impacts of designation.

(5) In reaching a decision, the secretary shall use:

(a) The relevant information contained in the data base and inventory system;

(b) Relevant information provided by other governmental agencies; and

(c) Any other relevant information or analysis submitted during the comment period and public hearing.

(6) A final written decision shall be issued by the secretary including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The cabinet shall simultaneously send the decision by certified mail to the petitioner, all intervenors, and to the Regional Director of the Office of Surface Mining, U.S. Department of the Interior.

Section 9. Administrative and Judicial Review. (1) Following any order or determination of the cabinet concerning completeness or frivolousness of a petition, any person with an interest which is or may be adversely affected may request a hearing on the reasons for the order or determination, in accordance with 405 KAR 7:090. Any person with an interest which is or may be adversely affected and who has participated in an administrative hearing under this subsection shall have the right to judicial review as provided in KRS 350.610(6).

(2) Any person with an interest which is or may be adversely affected by a final decision of the secretary under Section 8(6) shall have the right to judicial review as provided in KRS 350.610(6).

Section 10. Map. The cabinet shall maintain a current map of areas designated as unsuitable for all or certain types of surface coal mining operations at each regional office and at the central office in Frankfort. Copies of such maps will be available for inspection and copying as prescribed in the Open Records Act, KRS 61.872 to 61.884. Such maps will periodically be distributed to appropriate federal, state, areawide, and local government agencies.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: October 15, 1985

FILED WTIH LRC: October 15 1985 at 11:30 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 27, 1985 at 10 a.m. in room G-1 of the Capital Plaza Tower. Written comments may be submitted on or before the scheduled hearing date. However, if no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending and testifying at this hearing shall notify in writing: George Risk, Department for Surface Mining Reclamation and Enforcement, 3rd Floor Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation establishes the procedures and criteria for reviewing and making determinations concerning petitions seeking to designate lands as unsuitable for all or certain types of coal mining operations. In that regard, this regulation affects all persons who submit such petitions, existing and future mining operations within areas covered by such petitions, persons desiring to intervene during the petition-review process, persons owning property within petitioned areas, and other persons with interests in such petitions or the areas covered by such petitions. (It should be noted that since January 1983, the cabinet has received five petitions for the designation of lands as unsuitable for mining. The final decision for only one of these petitions, Lands Unsuitable Petition 83-1, currently imposes restrictions on coal mining operations.)

The regulation amendments, as proposed, will revise a facet of the criteria which can exempt lands from being eligible for designation as unsuitable for surface coal mining operations (see section 6 of this analysis. These amendments will affect those persons identified above who are involved in, or have interests in, situations in which an area is petitioned for designation as unsuitable for mining and the more restrictive requirements of the amended regulation prohibit an applicant from establishing that the petitioned area is exempt from eligibility for designation as unsuitable for mining.

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

1. First year: The incurred costs and savings will be related to situations in which an applicant proposes to conduct mining operations on an area which has been petitioned for designation as unsuitable for mining and, because of the more restrictive criteria established in these amendments, is unable to demonstrate that the area is exempt from eligibility for such a designation. In such a

situation, the applicant may be required to redesign the mine plan, may be restricted from conducting certain activities within the petitioned area, or may be prohibited from obtaining permits within the petitioned area.

For applicants who are able to make the additional demonstrations required by these amendments, only minimal cost increases will be incurred. These cost increases will be determined by the information requirements necessary to make the additional demonstrations required by these amendments.

2. Continuing costs or savings: See section (1)(a)1.

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

(b) Reporting and paperwork requirements: The amendments, as proposed, will require that some permit applications contain demonstrations in excess of those currently required in order to establish that the proposed operation has substantial legal and financial commitments (and therefore that the land to be affected by the operation is exempt from eligibility for designation as unsuitable for mining). However, based on previous trends regarding lands-unsuitable petitions and the related, infrequent need for applicants to demonstrate the existence of substantial legal and financial commitments, the need for such additional demonstrations should be a rarity in permit applications.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet anticipates minor increases in the time required to review the occasional application which contains the additional information discussed in section (1)(b) of this analysis. This additional review time will result in minor, additional costs to the cabinet.

These costs will be related to the number of applications which contain demonstrations of substantial legal and financial commitments. The number of applications containing such demonstrations will be determined by factors such as the nature of lands-unsuitable petitions and the coal-related economics of the areas covered by such petitions. Based on previous trends, the costs incurred by the cabinet as a result of these amendments should be minimal.

2. Continuing costs or savings: See section (2)(a)1.

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: 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: The amendments proposed to this regulation redefine the term "substantial legal and financial commitments." (Lands where substantial legal and financial commitments, in coal mining operations, were in existence prior to January 4, 1977 are exempt from being eligible for designation as unsuitable for surface coal mining operations.) In addition to requiring other minimum criteria, the proposed definition will necessitate, consistent with federal regulations, the prior existence of a long-term coal contract in order for an operation to establish the existence of substantial legal and financial commitments. This proposed definition also clarifies concepts in the federal definition and in the current state definition.

The requirement that necessitates the existence of long-term coal contracts for the establishment of substantial legal and financial commitments is being added to fulfill a requirement of the final judgment and order of the U.S. District Court in Sierra Club et al. vs. Watt et al., Civil Action No. 82-30.

Tiering:
Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, pursuant to the federal and Kentucky surface mining laws and regulations, apply equally to all applicants and permittees under Title 405, Chapters 7-24.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:013. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13A.350
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred 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 for a period of one (1) year.

(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 licensed authorized agent of such owner or trainer.

(3) Every entry must be in writing, except that an entry may be made by telephone to the racing secretary, but must be confirmed 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, and

dam, as reflected by such horse's registration certificate.

(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.

(c) Every entry shall clearly state any and all medications, drug, or substances which the horse shall receive as pre-race treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: NSAID (non-steroidal anti-inflammatory) shall be designated by (B); and any and all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).

(5) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(6) No horse may be entered in two (2) races to be run on the same day.

(7) No horse which has not started in the past ninety (90) days shall be permitted to start unless it has at least one (1) published work-out within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting. In the event that a horse has done the requisite work-out, but through no fault of the trainer, such work-out does not appear in the past performances, the horse shall be permitted to start and the correct work-out announced. No horse which has never started shall be entered until the trained has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

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 commission in its approved farm list.

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 or 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. 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 purse race to the exclusion of a single interest. In races in which the number of starters is 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 (1) of the 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 stakes race."

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, 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 subscription 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. Closing. (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 a 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 complied without delay by the racing secretary and, 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 and extensions thereof 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) At tracks measuring less than a mile in circumference, no more then ten (10) horses may start in any race without consent of the stewards, and no more than twelve (12) horses may start under any circumstance.

(3) 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.

(4) If any purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) 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 of such conditions:

(a) Horses originally joined as a mutuel entry may be place 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 included two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeded 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 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, unless otherwise stipulated in published conditions of the race.

(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 permitted to run in the race for which it 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. The racing secretary shall submit for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(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.

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. Declarations. 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 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 race preceding such stakes race by the filing in writing of such intention with the racing secretary, unless a list of also-eligibles has been drawn, in which case scratches must be filed at the regular scratch time as posted by the racing secretary, and no horse will be excused thereafter without a valid physical reason. 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 mire 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 numbers 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.

Section 16. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

RICK NORTON, Executive Director
APPROVED BY AGENCY: September 16, 1985
FILED WITH LRC: October 8, 1985 at 11:30 a.m.
PUBLIC HEARING SCHEDULED: Persons having an interest in the subject matter of this proposed regulation and wishing to comment should notify Mr. Michael A. Fulkerson in writing at the address below. The public hearing will be Thursday, November 21, 1985 at 10 a.m. at the offices of the Kentucky State Racing Commission at 535 West Second Street, Lexington, Kentucky 40508 or Kentucky State Racing Commission, P. O. Box 1080, Lexington, KY 40508.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson
(1) Type and number of entities affected: Owners and trainers/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: Insignificant
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Minimal additional cost
2. Continuing costs or savings: Same as above
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Does not apply.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, or drug, or substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Also prohibited are any drugs which might mask or screen the presence of the aforementioned prohibited drugs, or prevent or delay testing procedures.

(3) Proof of detection by the commission chemist of a medication, or drug, or substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that such horse was administered and carried such prohibited medication, drug, or substance, in its body while running in such race in violation of this rule.

(4) Medications, drugs, or substances must be used consistently on horses. Permission to change the use of any NSAID or bleeder medication must be obtained from the commission veterinarian.

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which such horse is entered and prior to such race. No medication, drug, or substance shall be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian(s).

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this regulation, or caused, or participated, or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering; and failing to prove such freedom from negligence (or reliance on the professional ability of a licensed veterinarian) shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation, if found negligent in guarding or protecting such horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing such treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a pre-race or post-race test may be grounds for disciplinary action:

(1) Such daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Such daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in pre-race treatment and submitted daily reports must be in complete accord; any deviation shall result in the scratching of the particular horse, and may be grounds for disciplinary action. [Such daily reports shall remain confidential except that the commission veterinarian may compile general data therefrom to assist the commission in formulating policies or rules, and the stewards may review same in investigating a possible violation of these rules.]

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing, and such detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist, provided the costs of such testing are borne by the owner or trainer requesting such test. In the absence of any such order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn are to be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker, of a horse to be tested, and no lead pony, shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse are prohibited in the detention area; buckets and water will be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner, or responsible trainer (who, in the case of a claimed horse shall be the person in whose name such horse raced), or a stable representative designated by such owner or trainer, shall be present and witness the taking of such specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse by the commission veterinarian or his assistant at the detention barn shall be placed equally in double

containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with these provisions, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature, as near as possible. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than four (4) laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these rules may be present at the time of the opening, re-packing, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. A blind sample may be submitted only if there are fifty (50) ml. or more of urine available. If there are less than fifty (50) ml. of urine available, the referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse.

These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

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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: Insignificant
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Minimal additional cost.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: N/A
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(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Does not apply.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 25:010. Mobile homes.

RELATES TO: KRS 227.570
PURSUANT TO: KRS 227.590
NECESSITY AND FUNCTION: KRS 227.590 requires the Mobile Home Certification and Licensure Board to establish rules and regulations governing the standards for manufacture, sale, and alteration of mobile homes. These regulations are intended to assure safety for owners and occupiers of mobile homes.

Section 1. Authorization. (1) These rules are authorized by KRS 227.590 and established pursuant to the rule making procedures set forth in KRS Chapter 13, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to mobile homes. In the event that these regulations conflict with the codes promulgated by the National Fire Protection Association NFPA 501 (B) and Title VI of the Federal Housing and Community Development Act of 1974 (Hud Act), the codes or the HUD Act subsequent to the effective enforcement date, shall govern in all cases.

(2) At least thirty (30) days before the adoption or promulgation of any change in or addition to the rules and regulations, the office shall mail to all manufacturers possessing valid certificates of acceptability and dealers possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views or arguments with or without opportunity to present the same orally in any manner.

(3) Every rule or regulation, or modification, amendment or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.

Section 2. Enforcement. Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any premises in order to inspect any mobile home for which the office has issued a seal of approval, or to inspect such mobile home's equipment and/or its installations to insure compliance with the Act, the code and/or the HUD Act and these regulations. Upon complaint and request by the owner or occupant, a privately owned mobile home bearing a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance, he may require that a portion or portions of such mobile homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Definitions. In addition to the definitions contained herein, the definitions of NFPA 501 (B) by the National Fire Protection

Association and/or the HUD Act shall apply:

(1) Act. The Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) HUD Act. Title VI of the "Housing and Community Development Act of 1974 - National Mobile Home Construction and Safety Standards."

(3) Agency, testing. An outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(4) Alteration or conversion. The replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing or electrical systems or the functioning thereof of mobile homes subject to these rules is an alteration or conversion unless excluded by these rules. The above equipment must be installed in accordance with manufacturer's specifications.

(5) Board. Mobile Home Certification and Licensure Board.

(6) Certificate of acceptability. The certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import, or sell mobile homes within the state.

(7) Class "A" seal. A device or insignia issued by the office to indicate compliance with the standards, established by the office, or rules and regulations established by the board for new mobile homes not covered by the HUD Act and manufactured after the effective date of the Act.

(8) Class "B" seal. A device or insignia issued by the office to indicate compliance with the standards established by the office or rules and regulations established by the board for used mobile homes.

(9) Dealer. Any person, other than a manufacturer, as defined herein, who sells or offers for sale three (3) or more mobile homes in any consecutive twelve (12) month period.

(10) Established place of business. A fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a mobile home dealer, which shall include the books, records, files and equipment necessary to properly conduct such business or a building having sufficient space therein to properly show and display the mobile homes being sold and in which the functional duties of a mobile home dealer may be performed. The place of business shall not consist of residence, tent, temporary stand or open lot. It shall display a suitable sign identifying the dealer and his business.

(11) Hard surfaced lot. An area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel and/or stone, or other material of similar characteristics.

(12) Manufacturer. Any person who manufactures mobile homes and sells to dealers.

(13) Manufactured housing. Mobile homes, recreational vehicles, mobile office or commercial units, add-a-rooms, or cabanas.

(14) Mobile home or manufactured home. Means a structure, transportable in one (1) or more sections, which in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under Title VI of the federal act. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure. It shall include house trailers which are regulated as to length, width and registration by KRS Chapter 186. "Add-a-room" units are not considered an integral part of a mobile home. A new mobile home used or intended to be used as a single family dwelling is covered by the HUD Act and is excluded from these regulations.

(15) NFPA 501 (A). That section of the National Fire Code adopted by the National Fire Protection Association that pertains to mobile home installation.

(16) NFPA 401 (B). That section of the National Fire Code adopted by the National Fire Protection Association that pertains to standards for mobile homes not covered by the HUD Act.

(17) Office. The Office of the State Fire Marshal.

(18) Person. This means a person, partnership, corporation or other legal entity.

(19) Secretary. The Secretary of the U.S. Department of Housing and Urban Development.

(20) Suitable sign. A sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 1/2) inches.

Section 4. Scope and Purpose of the Act and Regulations. (1) Except to the extent otherwise stated in the Act and these regulations and in other laws of the Commonwealth which are not inconsistent with or superseded by the Act and these regulations, these regulations govern the design, manufacture and sale of mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth. These regulations apply to mobile homes manufactured in manufacturing facilities located within or outside the Commonwealth. Mobile homes brought into this state for exhibition use only and which will not be sold in this state may be excluded from the coverage of this Act and regulations if inspections reveal no condition hazardous to health or safety.

(2) The state legislature has enacted the

mobile home and recreational vehicle Act to protect the health and safety of the owner, occupiers, and all other persons from mal-manufactured mobile homes. The office has been given authority to carry out the purpose of the Act. The Act sets out the minimum standards for design and manufacture. Dealers are encouraged to maintain ethical business standards beyond non-fraudulent minimums.

Section 5. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in mobile homes not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce such standards and requirements for the body and frame design and construction of mobile homes as are reasonably necessary in order to protect the health and safety of the occupants and the public.

(3) All mobile homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky shall be constructed in accordance with NFPA 501 (B), 1977 edition, herein adopted by reference.

(4) On all used mobile homes, said standards shall be that the dealer shall certify that the electric, heating, plumbing systems, doors, windows, structural integrity of the unit, smoke detection equipment and all exterior holes have been sealed to prevent the entrance of rodents, and repaired if necessary, and found to be in safe working condition and thus be in conformity with the intent of the Act to protect the health and safety of the occupants and general public.

(5) All mobile homes taken in trade must be reinspected and certified. The existing Class "A" or Class "B" seal may be removed or a new seal may be applied over the existing seal. When a new mobile home purchased under the provision of the HUD Act is resold, it becomes a used mobile home and subject to the provisions of this section. A seal will not be required if such dealer submits an affidavit that the unit will not be resold for use as such by the public.

(6) All new mobile homes shall be installed per manufacturers instructions or NFPA 501 (A), 1977 edition when manufacturers defer to local jurisdiction. All used mobile homes shall be installed in accordance with NFPA 501 (A), 1977 edition.

(7) All new mobile homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems.

(b) Inspection of the heating unit to determine adequacy of systems.

(c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations.

(8) Any licensed Kentucky mobile home dealer that maintains the capability to perform minor maintenance of plumbing, heating and electrical systems of mobile homes shall be permitted to inspect and certify those mobile homes purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Office of the State Fire Marshal for appropriate certification.

(9) Any unit found to be in non-compliance with the requirements of Section 5(7) of this regulation shall be corrected prior to the dealer certifying the unit. All units requiring repairs or correction prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of mobile homes shall be twenty (20) dollars per hour plus mileage as required and a twenty-five (25) dollar seal fee.

Section 6. Applicability and Interpretation of Code and Regulation Provisions. Any questions regarding the applicability or interpretation of any provisions or code or regulation adopted shall be submitted in writing by any interested person to the office for resolution. It is the policy of the office that with respect to questions regarding NFPA 501 (B), any such questions shall whenever feasible be submitted to the NFPA in accordance with the established procedures of the organization. The decision of the office shall be in writing.

Section 7. Certificate of Acceptability. (1) No manufacturer may manufacture, import, or sell any mobile home in this state after the effective date of this Act, unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Mobile homes not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501 (B) need not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer must submit and the office must approve in-plant quality control systems.

(b) A $400 fee must accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer must furnish and maintain with the office proof of general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 [$100,000] bodily injury or death for each person, $400,000 [$300,000] bodily injury or death for each accident, and $100,000 [$50,000] property damage.

(3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, and plumbing systems. All plans shall

be submitted on sheets, the minimum possible size of which is eight and one-half inches by eleven inches (8 1/2" x 11") and the maximum possible size of which is twenty-four inches by thirty inches (24" x 30"). The manufacturer shall certify that the aforementioned systems comply with NFPA 501 (B).

(b) Also a copy of the procedure which will direct the manufacturer to construct mobile homes in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and regulations shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a federal label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format of Appendix A.

(5) No manufacturer to which a certificate of acceptability has been issued shall modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he must also comply with dealer licensing provisions.

(7) Should the applicant not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. Should the applicant fail to submit a corrected application in accordance with the information supplied on the application correction notice, the application will be deemed abandoned and twenty (20) percent of fees due will be forfeited to the office. Any additional submission shall be processed as new application.

(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;
(b) The main address of the company is changed;
(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
(d) The location of any manufacturing facility is changed;
(e) A new manufacturing facility is established; or
(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated by him at the time of its submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) The office may determine that the standards for mobile homes established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to NFPA 501 (B). If the office finds that such standards are actually enforced then it may issue a certificate of acceptability for such mobile homes.

(11) A certificate of acceptability may be denied, suspended, or revoked on the following grounds:

(a) Evidence of insolvency;
(b) Material misstatement in application for certificate of acceptability;
(c) Willful failure to comply with any provisions of the Act or any rule or regulation promulgated by the board under the Act;
(d) Willfully defrauding any buyer;
(e) Willful failure to perform any written agreement with any buyer or dealer;
(f) Failure to furnish or maintain the required liability insurance;
(g) A fraudulent sale, transaction, or repossession;
(h) Violation of any law relating to the sale or financing of mobile homes.

(12) If a certificate holder is a firm or corporation, it shall be sufficient cause for denial, suspension or revocation of a certificate that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a certificate to such party as an individual. Each certificate holder shall be responsible for any or all of his salesmen while acting as his agent while the agent is acting within the scope of his authority.

(13) Procedure for denial, revocation or suspension.

(a) The office may deny the application for a certificate of acceptability by written notice to the applicant, stating the grounds for such denial.

(b) No certificate of acceptability shall be suspended or revoked by the office except after a hearing thereon. The office shall give the certificate holder at least thirty (30) days notice of the time and place of the hearing and of the charges to be heard.

(c) Any manufacturer who violates or fails to comply with this Act or any rules or regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation within twenty (20) days. Should the manufacturer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any certificate of acceptability if it finds that:

1. The manufacturer has failed to pay the fees authorized by the Act; or that
2. The manufacturer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of the Act.
3. The manufacturer has shipped or imported into this state a mobile home to any person other than to a duly licensed dealer.

(14) Any person aggrieved by any ruling of the office denying a certificate of acceptability within fifteen (15) days after any such ruling of the office may appeal such ruling to the

board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all the members concurring therein, its findings and determination after such hearing and its order in the matter. If the board shall determine and order that any applicant is not qualified to receive a certificate of acceptability, no certificate shall be granted. If the board shall determine that the certificate holder was willfully or through gross negligence been guilty of a violation of any of the provisions of the Act, his certificate may be suspended or revoked.

(15) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided for by KRS 281.780 and 281.785.

(16) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 8. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the mobile home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no such tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 9. Dealer License. (1) No dealer of mobile homes shall engage in business as such in this state without a license issued by the office upon application.

(2) Application must contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and regulations;

(e) Names of offices if dealership in corporate form;

(f) Names of partners if dealership in partnership form;

(g) Any other information the office deems commensurate with safe-guarding of the public interest in the locality of the proposed business.

(3) All licenses shall be granted or refused within thirty (30) days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $100. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(5) The license must be conspicuously displayed at the established place of business. In case such location be changed, the office shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality shall require a new license.

(6) The dealer must furnish and maintain with the office certification of liability insurance in the minimum amount of $200,000 [$50,000] bodily injury or death for each person, $300,000 [$100,000] bodily injury or death for each accident, and $100,000 [$25,000] property damage.

(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Appendix B. The report shall be made available to the field inspector on a monthly basis.

(8) No dealer shall have the authority to alter any mobile home manufactured under the federal code without the express permission of the manufacturer. Any dealer altering a mobile home shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a mobile home shall include but is not limited to: Addition/deletion of windows, doors, or partitions; conversion of a heat producing appliance from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heat producing appliance, etc. The following does not constitute an alteration or conversion; replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing of furniture to accommodate the consumer and any other cosmetic repairs.

(9) Notification of a change in the application information must be made within thirty (30) days of any of the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

(d) There are changes in the principal officers of the firm.

(10) A license may be denied, suspended or revoked on the following grounds:

(a) A showing of insolvency in a court of competent jurisdiction;

(b) Material misstatement in application;

(c) Willful failure to comply with any provisions of the Act or any rule or regulation promulgated by the board under the Act;

(d) Willful failure to perform any written agreement with the buyer;

(e) Willfully defrauding any buyer;

(f) Failure to have or to maintain an established place of business;

(g) Failure to furnish or maintain the required liability insurance;

(h) Making a fraudulent sale, transaction or repossession;

(i) Employment of fraudulent devices, methods, or practices in connection with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(j) Failure of a dealer to put the title to a mobile home in his name after said dealer has acquired ownership of the mobile home by trade or otherwise;

(k) Violation of any law relating to the sale or financing of mobile homes.

(11) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for any or all of his salesmen while acting as his agent while said agent is acting within the scope of his authority.

(12) Upon proceedings for the suspension of a license for any of the violations enumerated in the Act, the licensee may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the usm of fifty (50) dollars per day.

(13) Procedure for denial, revocation, or suspension.

(a) The office may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.

(b) No license shall be suspended or revoked by the office except after a hearing thereon. The office shall give the licensee at least thirty (30) days notice of the time and place of hearing and of the charges to be heard.

(c) Any dealer who violates or fails to comply with the Act or any rules or regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation, and instructed to correct the violation within twenty (20) days. Should the dealer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any license if it finds that:

1. The dealer has failed to pay the fees authorized by the Act; or

2. The dealer either knowingly or without the exercise of due care to prevent the same, has violated any provision of the Act or any regulation or order lawfully made pursuant to and within the authority of the Act.

(14) Any person aggrieved by any ruling of the office denying, suspending or revoking a license, within fifteen (15) days after such ruling of the office may appeal such ruling to the board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all the members concurring therein, its findings and determination after such hearing and its order in the matter. If the board shall determine that the licensee has willfully or through gross negligence been guilty of a violation of any of the provisions of the Act, his license may be suspended or revoked.

(15) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided for by KRS 281.780 and 281.785.

Section 10. Temporary Licenses. (1) Any dealer other than one duly licensed in Kentucky wishing to show and offer mobile homes within the Commonwealth of Kentucky for the express purpose of retailing said units to the general public, shall be required to purchase from the Office of the State Fire Marshal a temporary license. Said license shall not exceed fifteen (15) days duration and the license fee shall be fifteen (15) dollars for each authorized event.

(2) Applicant shall meet the following requirements before a temporary license is granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Must certify to the office that the dealership has proper liability insurance in the minimum amount of $50,000 bodily injury or death for each person, $100,000 bodily injury or death for each accident, and $25,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office, that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used mobile homes are not permitted to be shown or offered for sale within the Commonwealth of Kentucky by non-resident dealers at any time; and

(d) Provide all other information as may be required by the office.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a mobile home show within the Commonwealth of Kentucky provided they do not sell or offer for sale to the general public new or used mobile homes.

Section 11. Seals. (1) No manufacturer who has received a certificate of acceptability from the office shall sell or offer for sale to Kentucky dealers in this state mobile homes not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) No dealer who has received a license from the office shall sell a mobile home unless it has a seal. Any dealer who has acquired a used mobile home without a seal shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new mobile home not covered by the HUD Act, bearing a seal, may qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 7 of this regulation.

2. Any dealer, except one altering a mobile home bearing a seal, may qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Sections 7 or 9 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty (20) dollars for each Class "A" seal or twenty (20) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control

approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing equipment, electrical equipment installations or fire safety in a mobile home not covered by the HUD Act, which bears a seal, shall void such approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those mobile homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501 (B).

3. Any dealer proposing an alteration to a mobile home not covered by the HUD Act, bearing a seal shall make application to the office. Such application shall include:

a. Make and model of mobile home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications when required.

e. Location of the mobile home where work is to be performed.

f. Name and address of the owner of the mobile home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. Should inspection reveal that a manufacturer is not constructing mobile homes not covered by the HUD Act, according to NFPA 501 (B) and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture mobile homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, such manufacturer may resubmit an application for seal.

(e) Seal removal. In the event that any mobile home not covered by the HUD Act, bearing the seal is found to be in violation of these rules, the office shall attach to the vehicle a notice of non-compliance and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the non-compliance tag until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific mobile home not covered by the HUD Act. Assigned seals are not transferable and are void when not affixed as assigned, and all such seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking may be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the mobile home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal on payment of the replacement seal fee of two (2) dollars.

APPENDIX A

UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the recreational vehicles as described hereon have been constructed in compliance with NFPA 501 C, 1977 Edition.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

This form must be used in reporting units to the Office of the State Fire Marshal. The form should be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form should be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

APPENDIX B

_____
Name of Dealer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new recreational vehicles described hereon have the Kentucky Class A seal affixed.

No.	Serial #	KY Seal #	Date Mfg.	Make	Purchaser & Address

possessing valid certificates of acceptability and dealers possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views or arguments with or without opportunity to present the same orally in any manner.

(3) Every rule or regulation, or modification, amendment or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.

Section 2. Enforcement. Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's Office is authorized to enter any premises in order to inspect any recreational vehicle for which the office has issued a seal of approval, or to inspect such recreational vehicle's equipment and/or its installations to insure compliance with the Act, the code, and these regulations. Upon complaint and request, a privately-owned recreational vehicle bearing a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance, he may require that a portion or portions of such recreational vehicles be removed or exposed in order that a compliance inspection can be made.

Section 3. Definitions. In addition to the definitions contained herein, the definitions of NFPA 501(C) by the National Fire Protection Association shall apply:

(1) Act. The Mobile Home and Recreational Vehicle Act, KrS 227.550 to 227.660.

(2) Agency, testing. An outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which the specific information is included stating that the equipment and installations listed or labeled have been testing and found safe for use in a specific manner; and

(e) Approved by the board.

(3) Alteration or conversion. The replacement, addition, modification, or removal of any equipment or installations which may affect the plumbing, heat-producing, electrical, and fire and life safety systems or the functioning thereof of recreational vehicles subject to these rules is an alteration or conversion unless excluded by these rules. The above equipment must be installed in accordance with manufacturer's specifications.

(4) Board. Recreational Vehicle Certification and Licensure Board.

(5) Certificate of acceptability. The certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import, or sell recreational vehicles within the state.

(6) Class "A" seal. A device or insignia issued by the office to indicate compliance with the standards, established by the office or rules and regulations established by the board for recreational vehicles manufactured after the effective date of the Act.

(7) Class "B" seal. A device or insignia issued by the office to indicate compliance with the standards established by the office, rules and regulations established by the board for used recreational vehicles without a class "A" seal, or for new recreational vehicles manufactured prior to the effective date of the Act.

(8) Dealer. Any person, other than a manufacturer, as defined herein, who sells or offers for sale three (3) or more recreational vehicles in any consecutive twelve (12) month period.

(9) Established place of business. A fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a recreational vehicle dealer, which shall include the books, records, files, and equipment necessary to properly conduct such business or building having sufficient space therein to properly show and display the recreational vehicles being sold and in which the functional duties of a recreational vehicle dealer may be performed. The place of business shall not consist of residence, tent, temporary stand, or open lot. It shall display a suitable sign identifying the dealer and his business.

(10) Hard surfaced lot. An area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel and/or stone, or other material of similar characteristics.

(11) Manufacturer. Any person who manufactures recreational vehicles and sells to dealers.

(12) NFPA 501(C). That section of the National Fire Code adopted by the National Fire Protection Association that pertains to standards for recreational vehicles.

(13) Office. The Office of the State Fire Marshal.

(14) Person. This means a person, partnership, corporation or other legal entity.

(15) Recreational vehicle. For purposes of the scope of the Act and regulations, this is a vehicular type unit designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.

(16) Suitable sign. A sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and a minimum width of one and one-half (1 1/2) inches.

Section 4. Scope and Purpose of the Act and Regulations. (1) Except to the extent otherwise stated in the Act and these regulations and in other laws of the Commonwealth which are not inconsistent with or superseded by the Act and these regulations, these regulations govern the design, manufacture, storage, and sale of recreational vehicles which are manufactured, sold, leased, or transported for use within or outside of the Commonwealth. These regulations apply to recreational vehicles manufactured in

manufacturing facilities located within or outside the Commonwealth. Recreational vehicles brought into this state for exhibition use only and which will not be sold in this state may be excluded from the coverage of this Act and regulations if inspections reveal no condition hazardous to health or safety.

(2) The legislature has enacted the Mobile Home and Recreational Vehicle Act to protect the health and safety of the owner, occupiers, and all other persons from malmanufactured recreational vehicles. The office has been given the authority to carry out the purpose of the Act. The Act sets out the minimum standards for design and manufacture. Dealers are encouraged to maintain ethical business standards beyond non-fraudulent minimums.

Section 5. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce such standards and requirements for the installation of plumbing, heating, electrical, and fire and life safety systems in recreational vehicles as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) On all recreational vehicles manufactured for sale within the Commonwealth of Kentucky, said standards shall be NFPA 501(C), 1977 edition, herein adopted by reference.

(3) On all used recreational vehicles without a seal or any recreational vehicle manufactured prior to July 15, 1975, said standards shall be that the dealer shall certify that the electric, heating, plumbing, and fire and life safety systems have been checked, and repaired if necessary, and found to be in safe working condition and thus be in conformity with the intent of the Act to protect the health and safety of the occupants and general public.

(4) All recreational vehicles taken in trade must be reinspected and certified. The existing class "A" or class "B" seal may be removed or a new seal may be applied over the existing seal. A seal will not be required if such dealer submits an affidavit that the unit will not be resold for use as such by the public.

(5) All new recreational vehicles purchased outside the Commonwealth of Kentucky not bearing a class "A" seal of approval and all used recreational vehicles purchased outside the Commonwealth of Kentucky, regardless of the type seal affixed, shall be delivered to a certified Kentucky dealer for inspection according to the following criteria:

(a) Inspection of the plumbing and waste systems;

(b) Inspection of the heating unit to determine adequacy of the system;

(c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations;

(d) Inspection of fire/life safety (fire extinguishers and second means of egress).

(6) Any licensed Kentucky recreational vehicle dealer that maintains the capability to perform minor maintenance of plumbing, heating, and electrical systems of recreational vehicles shall be permitted to inspect and certify those recreational vehicles purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Department of Housing, Buildings and Construction, State Fire Marshal's Office for appropriate certification.

(7) Any unit found to be in non-compliance with the requirements of Section 5(5) of this regulation shall be corrected prior to the dealer certifying the unit. All units requiring repairs or corrections prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(8) The fee for the inspection of recreational vehicles shall be fifteen (15) dollars per hour plus mileage as required and a twenty (20) dollar seal fee.

Section 6. Applicability and Interpretation of Code and Regulation Provisions. (1) Any questions regarding the applicability or interpretation of any provisions of code or regulation adopted shall be submitted in writing by any interested person to the office for resolution. It is the policy of the office that with respect to questions regarding NFPA 501(C), any such questions shall whenever feasible be submitted to the NFPA in accordance with the established procedures of the organization. The decision of the office shall be in writing.

Section 7. Certificate of Acceptability. (1) No manufacturer may manufacture, import, or sell any recreational vehicle in this state after the effective date of this Act, unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Recreational vehicles manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(C) need not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer must submit and the office must approve in-plant quality control systems;

(b) An affidavit certifying compliance with the applicable standards must be attached to the application;

(c) A $400 fee must accompany the application. The fee shall be paid by check or money order and shall be made payable to: Kentucky State Treasurer;

(d) The manufacturer must furnish and maintain with the office proof of general liability insurance to include lot and completed operations insurance in the minimum amount of $300,000 [$100,000] bodily injury or death for each person, $400,000 [$300,000] bodily injury or death for each accident, and $100,000 [$50,000] property damage.

(3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half inches by eleven inches (8 1/2" x 11"), and

the maximum possible size of which is twenty-four inches by thirty inches (24" x 30"). The manufacturer shall certify that the aforementioned systems comply with NFPA 501(C).

(b) Also a copy of the procedure which will direct the manufacturer to construct recreational vehicles in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection.
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and regulations shall be submitted to the office no later than the end of the first week of each month. The unit certification format shall contain the information in the format of Appendix A.

(5) No manufacturer to which a certificate of acceptability has been issued shall modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he must also comply with dealer licensing provisions.

(7) Should the applicant not conform with these regulations, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. Should the applicant fail to submit a corrected application in accordance with the information supplied on the application correction notice, the application will be deemed abandoned and twenty (20) percent of fees due will be forfeited to the office. Any additional submission shall be processed as new application.

(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;
(b) The main address of the company is changed;
(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;
(d) The location of any manufacturing facility is changed;
(e) A new manufacturing facility is established; or
(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated by him at the time of its submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) The office may determine that the standards for recreational vehicles established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to NFPA 501(C)). If the office finds that such standards are actually enforced then it may issue a certificate of acceptability for such recreational vehicles.

(11) A certificate of acceptability may be denied, suspended, or revoked on the following grounds:

(a) Evidence of insolvency;
(b) Material misstatement in application for certificate of acceptability;
(c) Willful failure to comply with any provisions of the Act or any rule or regulation promulgated by the board under the Act;
(d) Willfully defrauding any buyer;
(e) Willful failure to perform any written agreement with any buyer or dealer;
(f) Failure to furnish or maintain the required liability insurance;
(g) A fraudulent sale, transaction, or repossession;
(h) Violation of any law relating to the sale or financing of recreational vehicles.

(12) If a certificate holder is a firm or corporation, it shall be sufficient cause for denial, suspension, or revocation of a certificate that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a certificate to such party as an individual. Each certificate holder shall be responsible for any or all of his salesmen while acting as his agent while the said agent is acting within the scope of his authority.

(13) Procedure for denial, revocation or suspension.

(a) The office may deny the application for a certificate of acceptability by written notice to the applicant, stating the grounds for such denial.

(b) No certificate of acceptability shall be suspended or revoked by the office except after a hearing thereon. The office shall give the certificate holder at least thirty (30) days notice of the time and place of the hearing and of the charges to be heard.

(c) Any manufacturer who violates or fails to comply with this Act or any rules or regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation within twenty (20) days. Should the manufacturer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any certificate of acceptability if it finds that:

1. The manufacturer has failed to pay the fees authorized by the Act;
2. The manufacturer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of that Act; or that
3. The manufacturer has shipped or imported into this state a recreational vehicle to any person other than to a duly licensed dealer.

(14) Any person aggrieved by any ruling of the office denying a certificate of acceptability within fifteen (15) days after any such ruling of the office may appeal such ruling to the board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all the members concurring therein, its findings and determination after such hearing and its order in the matter. If the

board shall determine and order that any applicant is not qualified to receive a certificate of acceptability, no certificate shall be granted. If the board shall determine that the certificate holder was willfully or through gross negligence has been guilty of a violation of any of the provisions of the Act, his certificate may be suspended or revoked.

(15) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS 281.780 and 281.785.

(16) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 8. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no such tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 9. Dealer License. (1) No dealer of recreational vehicles shall engage in business as such in this state without a license issued by the office upon application.

(2) Application must contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and regulations;

(e) Names of officers if dealership in corporate form;

(f) Names of partners if dealership in partnership form; and

(g) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business.

(3) All licenses shall be granted or refused within thirty (30) days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be $100. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(5) The license must be conspicuously displayed at the established place of business. In case such location be changed, the office shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality shall require a new license.

(6) The dealer must furnish and maintain with the office certification of liability insurance in the minimum amount of $200,000 [$50,000] bodily injury or death for each person, $300,000 [$100,000] bodily injury or death for each accident, and $100,000 [$25,000] property damage.

(7) Periodic reports.

(a) A unit compliance format certifying compliance with the Act and regulations shall be submitted to the field inspector on a monthly basis for "all" units sold. The unit certification format shall contain the information in Appendix B.

(b) Notification of a change in the application information must be made within thirty (30) days of any of the following occurrences:

1. Dealership name is changed;

2. Established place of business is changed;

3. There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

4. There are changes in the principal officers of the firm.

(8) A license may be denied, suspended or revoked on the following grounds:

(a) A showing of insolvency in a court of competent jurisdiction;

(b) Material misstatement in application;

(c) Willful failure to comply with any provision of the Act or any rule or regulation promulgated by the board under the Act;

(d) Willful failure to perform any written agreement with the buyer;

(e) Willfully defrauding any buyer;

(f) Failure to have or to maintain an established place of business;

(g) Failure to furnish or maintain the required liability insurance;

(h) Making a fraudulent sale, transaction or repossession;

(i) Employment of fraudulent devices, methods, or practices in connection with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(j) Failure of a dealer to put the title to a recreational vehicle in his name after said dealer has acquired ownership of the recreational vehicle by trade or otherwise; or

(k) Violation of any law relating to the sale or financing of recreational vehicles.

(9) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act of omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for any or all of his salesmen while acting as his agent while the said agent is acting within this scope of his authority.

(10) Upon proceedings for the suspension of a license for any of the violations enumerated in the Act, the licensee may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

(11) Procedure for denial, revocation, or suspension.

(a) The office may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.

(b) No license shall be suspended or revoked by the office except after a hearing thereon. The office shall give the licensee at least thirty (30) days notice of the time and place of hearing and of the charges to be heard.

(c) Any dealer who violates or fails to comply with the Act or any rules or regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation, and instructed to correct the violation within twenty (20) days. Should the dealer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any license if it finds that:

1. The dealer has failed to pay the fees authorized by the Act; or that

2. The dealer either knowingly or without the exercise of due care to prevent the same, has violated any provision of the Act or any regulation or order lawfully made pursuant to and within the authority of the Act.

(12) Any person aggrieved by any ruling of the office denying, suspending or revoking a license, within fifteen (15) days after such ruling of the office may appeal such ruling to the board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all members concurring therein, its findings and determination after such hearing and its order in the matter. If the board shall determine that the licensee has willfully or through gross negligence been guilty of a violation of any of the provisions of the Act, his license may be suspended or revoked.

(13) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided for by KRS 281.780 and 281.785.

Section 10. Temporary Licenses. (1) Any dealer other than one duly licensed in Kentucky, wishing to show and offer recreational vehicles within the Commonwealth of Kentucky for the express purpose of retailing said units to the general public, shall be required to purchase from the Office of the State Fire Marshal a temporary license. Said license shall not exceed fifteen (15) days duration and the license fee shall be ten (10) dollars for each authorized event.

(2) Applicant shall meet the following requirements before a temporary license is granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Must furnish to the office proof of liability insurance in the minimum amount of $50,000 bodily injury or death for each person, $100,000 bodily injury or death for each accident, and $25,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of the office, that each new unit the dealer displays, shows or offers for sale, bears a Kentucky class "A" seal of approval. Used units are not permitted to be displayed, shown or offered for sale within the Commonwealth of Kentucky by non-resident dealers;

(d) Provide all other information as may be required by the office.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a recreational vehicle show within the Commonwealth of Kentucky provided they do not sell or offer for sale to the general public recreational vehicles.

Section 11. (1) No manufacturer who has received a certificate of acceptability from the office shall sell or offer for sale to Kentucky dealers in this state recreational vehicles unless they bear a class "A" seal of approval issued by and purchased from the office. The provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) No dealer who has received a license from the office shall sell a recreational vehicle unless it has a seal. Any dealer who has acquired a used recreational vehicle without a seal shall apply to the office for a class "B" seal by submitting an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seals.

1. Any manufacturer, except one altering a new recreational vehicle bearing a seal, may qualify for acquisition of a class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 7 of this regulation.

2. Any dealer, except one altering a recreational vehicle bearing a seal, may qualify for acquisition for a class "B" seal by giving an affidavit certifying either that all electrical, heating, plumbing, and fire and life safety equipment has been checked, if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Section 7 or Section 9 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty (20) dollars for each class "A" seal or twenty (20) dollars for each class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the plumbing, heat-producing equipment, electrical equipment or installations, or fire and life safety in a recreational vehicle which bears a seal, shall void such approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion:

a. Repairs with approved component parts;

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

c. Adjustment and maintenance of equipment;

d. Replacement of equipment in kind;

e. Any change that does not affect those areas covered by NFPA 501 (C).

3. Any dealer proposing an alteration to a recreational vehicle bearing a seal shall make application to the office. Such application shall include:

a. Make and model of recreational vehicle;

b. Serial number;

c. State seal number;

d. A complete description of the work to be performed together with plans and specifications when required; and

e. Location of the recreational vehicle where work is to be performed.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. Should inspection reveal that a manufacturer is not constructing recreational vehicles according to NFPA 501(C) and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture recreational vehicles in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance such manufacturer may resubmit an application for seal.

(e) Seal removal. In the event that any recreational vehicle bearing the seal is found to be in violation of these rules, the office shall attach to the vehicle a notice of non-compliance and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the non-compliance tag until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific recreational vehicle. Assigned seals are not transferable and are void when not affixed as assigned, and all such seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulation.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking may be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the recreational vehicle serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal on payment of the replacement seal fee of two (2) dollars.

APPENDIX A to 815 KAR 25:020

UNIT CERTIFICATION FORMAT

_____
Name of Manufacturer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the recreational vehicles as described hereon have been constructed in compliance with NFPA 501 C, 1977 Edition.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

This form must be used in reporting units to the Office of the State Fire Marshal. The form should be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form should be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____ BY _____
Date Person Authorized to Certify These Units

APPENDIX B to 815 KAR 25:020

_____
Name of Dealer

_____ _____
Mailing Address County

_____, _____ _____
City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 through KRS 227.660 and regulations thereto and that the new recreational vehicles described hereon have the Kentucky Class A seal affixed.

No.	Serial #	KY Seal #	Date Mfg.	Make	Purchaser & Address

This form must be used in reporting units to the field inspector.

Date Signature

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: October 1, 1985
FILED WITH LRC: October 1, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 25, 1985 at 10 a.m., in the office of the Department of Housing, Buildings, and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of the General Counsel, Department of Housing, Buildings, and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 20, 1985, the hearing will be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: R.V. Dealers - 96; R.V. Manufacturers - 70
(a) Direct and indirect costs or savings to those affected:
1. First year: Slight increase.
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Insurance certification containing carrier and policy number.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
Tiering:
Was tiering applied? No. N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 8:020. Policies and procedures for local health department operations.

RELATES TO: KRS Chapter 212
PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410
NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.

Section 1. Local Health Policy Manual. The policies set forth in the October 15 [September 15], 1985, edition of the "Local Health Policy Manual" governing the maintenance and operation of local health departments are hereby adopted by reference.

Section 2. Financial Management Manual. The policies set forth in the October 15 [April 15], 1985, edition of the "Financial Management Manual" governing the operation of the financial management systems used by local health departments are hereby adopted by reference.

Section 3. Patient Services Reporting System Manual. The policies set forth in the May 1, 1984, edition of the "Patient Services Reporting System Manual" governing the collection of patient health/medical services delivered by local health departments are hereby adopted by reference.

Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.

Section 5. Planning Manual for Local Health Departments. The policies set forth in the March, 1985, edition of the "Planning Manual for Local Health Departments" governing the annual program planning process and procedures of local health departments are hereby adopted by reference.

Section 6. Standards Manual for Local Health Departments. The policies set forth in the March, 1985, edition of the "Standards Manual for Local Health Departments" governing the programmatic operations of local health departments are hereby adopted by reference.

Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by

reference.

Section 8. On-Line Environmental Health Management Information System. The policies set forth in the February 14, 1984, edition of the "On-Line Environmental Health Management Information System" manual are hereby adopted by reference.

Section 9. Consumer Product Safety Commission's Hazardous Substances Labeling Guide. The policies set forth in the May 25, 1979, edition of the "Consumer Product Safety Commission's Hazardous Substances Labeling Guide" are hereby adopted by reference.

Section 10. Consumer Product Safety Commission's In-Depth Investigations Manual. The policies set forth in the January 28, 1983, edition of the "Consumer Product Safety Commission's In-Depth Investigations Manual" are hereby adopted by reference.

Section 11. MCH Maternity Manual. The policies set forth in the July 1, 1985, edition of the "MCH Maternity Manual" governing the operation of the prenatal program conducted by local health departments are hereby adopted by reference.

Section 12. Sudden Infant Death Syndrome Program. The policies set forth in the January 1, 1985, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 13. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the October 15, 1985 [May 11, 1984], edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments are hereby adopted by reference.

Section 14. Standards for Regional Pediatric Clinics. The policies set forth in the October 15, 1985 [May 11, 1984], edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.

Section 15. Standards for Preventive Health Care in Children. The policies set forth in the May 11, 1984, edition of the "Standards for Preventive Health Care in Children" manual governing the operation of well child programs conducted by local health departments are hereby adopted by reference.

Section 16. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 17. Summary of Amendment. (1) In relation to Section 1 of this regulation relating to the Local Health Policy Manual, revise LHP 400-17 "Tuition Assistance Program" by placing additional restrictions on tuition assistance funded with state/federal restricted funds. To obtain tuition assistance, the local health department employee will now be required to meet specific eligibility and utilization requirements, submit their request in accordance with established guidelines and complete one (1) month of employment, after completion of the course, for each semester hour of tuition paid by the local health department. [500-1 "Overtime" to permit payment, at an employee's regular salary rate, for any accumulated compensatory leave in thirty (30) hour increments.]

(2) In relation to Section 2 of this regulation relating to the Financial Management Manual strike pages 11-12, 13(b), 17-22 undated and substitute in lieu thereof new pages 11-12, 13(b), 17-22 dated October 15, 1985, revising the local health department chart of accounts and function codes to include additional classifications necessary for the proper completion of Home Health Program Medicare and Medicaid cost reports.

(3) In relation to Section 13 of this regulation relating to the Genetic Disease Testing, Counseling and Education Services Program Standards, this manual has been revised as follows:

(a) Update the list of satellite genetic clinic sites by deleting one (1) site (West Liberty, Appalachian Regional Hospital) and adding two (2) sites (Mt. Sterling, Montgomery County Health Center and Paintsville, Johnson County Health Center).

(b) Update Family Financial Participation Scale based on revised poverty guidelines published in the Federal Register.

(c) Update Patient Service Document codes to conform with the latest Medical Record System Policy and Procedure Manual.

(d) Update the Program Plan Standards to conform with the Local Health Standards Manual.

(e) Change funding source from federal categorical grant funding to Maternal and Child Health Division funding.

(4) In relation to Section 14 of this regulation relating to the Standards for Regional Pediatric Clinics, this manual has been revised in its entirety. Significant revisions include:

(a) The format has been modified for greater clarity.

(b) The names of several organizational units have been changed to be consistent with reorganizations which have occurred since the original manual was published.

(c) Children admitted for continuing regional pediatric services are now eligible for preventive health assessments through the Well Child Program.

(d) Reporting instructions have been updated to include the ICD-9 diagnostic coding and to delete the cost section on the MCH-247-Quarterly Patient Report.

(e) The policy for purchasing medications has been revised to require prior agreements with pharmacies, to be consistent with the current Financial Management Manual for local health departments.

(f) The policy for reimbursement for hospitalization has been updated in accordance with the current Medical Assistance Program inpatient rate.

(g) The Maternal and Child Health Audit Tool has been revised to reflect the standards revisions.

(h) The most recent federal poverty income guidelines published by the Department of Health and Human Services are incorporated by reference.

C HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 4, 1985
FILED WITH LRC: October 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 1985 of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS
(Section 1, Local Health Policy Manual)

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 49 Local Health Departments.
(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: No additional.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Insignificant
2. Continuing costs or savings: Insignificant
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional.
(3) Assessment of anticipated effect on state and local revenues: Assure appropriate use of limited tuition assistance funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 2, Financial Management Manual)

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 47 Local Health Departments.
(a) Direct and indirect costs or savings to those affected:
1. First year: Negligable
2. Continuing costs or savings: Negligable
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Changes are necessary to meet new Medicare and Medicaid cost reporting requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Negligable
2. Continuing costs or savings: Negligable
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 13, Standards for Genetic Disease Testing Counseling & Education Services Program)

Agency Contact Person: Patricia K. Nicole, M.D.
(1) Type and number of entities affected: 10 local health departments; two non-profit hospitals.
(a) Direct and indirect costs or savings to those affected: No cost or saving.
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 effect.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No cost or saving.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation amendment makes only minor procedural changes in an existing service.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 14, Standards for Regional Pediatric Clinics)

Agency Contact Person: Patricia K. Nicole, M.D.
(1) Type and number of entities affected: 8 local health departments.
(a) Direct and indirect costs or savings to those affected: No cost or saving.
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: Eliminates one manual report; adds diagnosis coding.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No cost or saving.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation amendment makes only minor procedural changes in an existing service.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210
PURSUANT TO: KRS 210.010
NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources to prescribe regulations for the institutions under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the September 1, 1985, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the October 15 [September 1], 1985, edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Western State Hospital Policy Manual" consisting of thirty-two (32) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric Center Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 12. Summary of Amendment.

Section 2 is revised as follows:

HAZELWOOD POLICY MANUAL

87-1-2 #4 Management Audit Plan.
This policy outlines the responsibilities for oversite and review of facility activities to assure that information is properly communicated, and once reviewed, necessary actions taken. It appears to have no financial impact.

87-3-5 #49 Administration of PPD Skin Test.
This policy was updated to be in compliance with the new regulations pertaining to employees' skin tests. There is no financial impact from the policy.

87-4-1 #6B Vehicle Regulations.
This is a policy update and better complies with the facility's current needs in parking and enforcement of facility parking regulations. No financial impact.

87-4-2 #11B Receipt and Deposit of Funds.
This is a policy update which more clearly outlines the handling of funds in the facility. No financial impact.

87-5-1 #18A Family/Guardian Notification of Injury or Illness.
This policy was revised to more clearly specify family/guardian notification in cases of injury or illness of residents. No financial impact.

87-5-5 #28A Attachment to Emergency Pharmaceutical Services.
An update of the Memorandum of Agreement for Emergency Pharmaceutical Services. This memorandum is updated annually. No financial impact.

87-5-7 #21 Records Review.
This is a policy addition which adds a built-in review of facility records in a survey inspector-type manner. No financial impact.

87-6-7 #2B Behavior Management Programs.
The previous policy on Behavior Management was in compliance with the ICF/MR regulations only. The revised policy meets the requirements of ICF/MR and also meets the standards of the ACMRDD Accreditation Council. The new policy reflects the more current techniques utilized in the field of behavioral management. This policy does not appear to have any financial costs related.

[Section 1 is revised as follows:

OAKWOOD POLICY MANUAL

DST-0-7 18D New policy on sick leave - a progressive disciplinary measure on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 2 is revised as follows:

HAZELWOOD POLICY MANUAL

BII 87-9-2 18B
New policy on sick leave - a progressive disciplinary measure on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 3 is revised as follows:

CENTRAL STATE HOSPITAL ICF-MR POLICY MANUAL

C1 4-17 #7 New policy on sick leave - a progressive disciplinary measure on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 4 is revised as follows:

EASTERN STATE HOSPITAL POLICY MANUAL

D1 Section I #31 New Policy on alcohol abuse by employees to replace former policy.

D2 Section II #6 New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL

E1 HH-6.40 Prevention of Violence & Destructive Behavior. Revised to include more in-depth information as to prevention of violence.

E1 HH-6.60 Restraint - Procedure for the Use of Neuroleptics in Controlling Violent Patients. Revised to clarify procedures when restraints are deemed necessary.

E1 HH-6.70 Procedure for Mechanical Restraint
Revised to clarify procedures when restraints are deemed necessary.

E1 HH-6.80 Seclusion.
Revised to clarify procedure when seclusion is deemed necessary.

E1 Section X #7 New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 6 is revised as follows:

WESTERN STATE HOSPITAL POLICY MANUAL

F14 #12	New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 7 is revised as follows:

GLASGOW ICF POLICY MANUAL

G12 Page 15	New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 8 is revised as follows:

WESTERN STATE HOSPITAL ICF POLICY MANUAL

H1 #IX	New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 9 is revised as follows:

VOLTA POLICY MANUAL

I1, Personnel	New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.

Section 10 is revised as follows:

KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL

J1, Section 1 Personnel	New policy on sick leave to provide greater uniformity for all employees is added to existing policy in the manual.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: October 9, 1985
FILED WITH LRC: October 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 1985, of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected: This regulation with the attached reference material is the on-going policy and procedure manual of the state facilities for the treatment of patients with mental illness and mental retardation. These facilities function with 2,880 staff members serving 1,850 residents.
(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: This regulation usually does not affect the fiscal operation of these state facilities significantly. It affects the care and treatment of patients, compliance with JCAH standards, and Kentucky licensure regulations. The work environment of the staff is frequently the subject of this regulation also, along with the orderly management of the various programs.
(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: Present procedure not previously adopted by regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
(Proposed Amendment)

902 KAR 20:106. Operation and services; ambulatory surgical center.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
PURSUANT TO: KRS 216B.040, 216B.105
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services of ambulatory surgical centers.

Section 1. Scope of Operation and Services. Ambulatory surgical centers are public or private institutions that are hospital-based or freestanding, operated under the supervision of an organized medical staff and established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

Section 2. Definitions. (1) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(2) "Center" means an ambulatory surgical center.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for operation of the center and for compliance

with federal, state, and local laws and regulations pertaining to operation of the center.

(b) The licensee shall develop written policies for the administration and operation of the center. All medical policies shall be approved by the medical staff. Policies shall include:

1. Personnel practices and procedures. These shall be available to all personnel.

2. Job descriptions for each level of personnel including the authority, responsibilities, and actual work to be performed in each classification.

3. Written infection control measures. There shall be written procedures which govern the use of aseptic techniques and procedures in all areas of the center.

4. Sterilization of supplies.

5. Disposal of patient waste and any other potentially infectious materials.

6. Examination by a pathologist of tissues removed by surgery. Policies shall identify those tissues which require examination and those which do not.

7. Instances in which consultations with other physicians, dentists, or podiatrists are required.

8. A list of surgical procedures which may be performed in the center.

9. Granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics.

(2) Personnel.

(a) Administrator. The center shall have an administrator responsible for the day to day operation of the center and for delegating that responsibility in his or her absence.

(b) 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, and reports of all accidents occurring on duty.

(c) Medical staff requirements. The center shall have an organized medical staff responsible for the quality of medical care provided in the center and for the ethical and professional practices of its members.

1. The medical staff shall develop the center's medical care policies.

2. Surgical procedures shall be performed only by physicians, dentists, and podiatrists who are legally authorized to perform such procedures and have been granted privileges to perform such procedures by the center through its medical staff or governing body.

(d) Pharmaceutical, radiology and laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, and a physician specializing as a pathologist, respectively, on a full-time, part-time or regular consultative basis.

(e) The center shall employ registered nurses on a full-time basis for patient care in the operating and post-anesthesia recovery room.

(f) The center shall employ other nursing personnel, aides and technicians as required to meet the needs of the patients served by the center including personnel to be responsible for supervision, indexing, and filing of medical records.

(3) The center shall not provide accommodations for overnight stays.

(4) The center shall not have provisions for obstetrical deliveries.

(5) Physician coverage. A physician shall be present in the center until all patients have been discharged and have left the center.

(6) The center shall have a physician on the medical staff with admitting privileges in a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) The center shall arrange for transportation of patients who require hospital care and arrange for their admission.

(8) Medical records.

(a) Content. Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. All notes shall be legibly written or typed and signed. A minimum medical record shall include the following information:

1. Name and address of person or agency responsible for patient;

2. Identification date (name, address, age, sex, martial status);

3. Date of admission and discharge;

4. Referring and attending physicians', dentists' and podiatrists' names;

5. History and physical examination record prior to surgery;

6. Surgical consent form signed by patient or his legal representative;

7. Special examinations, such as consultations, clinical, laboratory, x-ray;

8. Doctor's orders, dated and signed by the physician, dentist or podiatrist;

9. Nurses' notes;

10. Complete medical record signed by the operating surgeon, including anesthesia record, pre-operative diagnosis, operative procedures and findings, postoperative diagnosis and where required tissue diagnosis by a pathologist on specimens surgically removed;

11. Charts including records of temperature, pulse, respiration, and blood pressure; and

12. A discharge summary completed at time of discharge which includes condition on discharge and postoperative instructions to patient.

(b) Indexing. Medical records shall be systematically filed for ready access to authorized personnel.

(c) Ownership. Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena. Medical records shall be made available when requested for inspection by duly authorized representatives of the board.

(d) The attending physician, dentist, or podiatrist shall complete and sign the medical record of each patient as soon as practicable after discharge, but not to exceed ten (10) days.

(e) Orders for medication and treatment shall be written in ink and signed by the prescribing physician, dentist or podiatrist and if given verbally, countersigned by him within forty-eight (48) hours except that all records for Schedule II drugs shall be signed immediately. A record of medication administered to the patient shall be included in the record and signed by the person administering the medication.

(f) Retention of records. All medical records shall be retained for a minimum of five (5) years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9) Bedrails shall be available for all patients in the admitting and recovery rooms.

Section 4. Sanitary Environment. The surgical center shall provide a sanitary environment to avoid sources and transmission of infections.

(1) An infection committee composed of members of the medical and nursing staff shall be established and be responsible for controlling and preventing infections within the center.

(2) All non-disposable sterile supplies shall be reprocessed at least every thirty (30) days.

(3) The center shall have suitable equipment for rapid and routine sterilization of supplies, utensils and equipment and shall store them in a clean, convenient and orderly manner.

(4) There shall be continuing education provided to all surgical center personnel on the cause, effect, transmission, prevention and elimination of infections.

Section 5. Surgical Services. (1) The center shall provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) Informed consent. The patient or the patient's legal representative shall sign a written informed consent prior to all surgical operations.

(3) The center shall have at least one (1) operating room.

(4) A medical history and physical evaluation shall be performed and entered into the medical record no more than thirty (30) days prior to surgery on all patients.

(5) Pertinent pre-operative diagnostic studies and laboratory tests shall be performed and made a part of the medical record prior to surgery. The pre-operative diagnosis shall be recorded in the medical record.

(6) All patients shall be examined by a physician immediately prior to surgery to evaluate the risk of anesthesia and of the procedure to be performed.

(7) A registered nurse shall be available to circulate at all times. The operating rooms shall be supervised by a registered nurse.

(8) The operating room supervisor shall have on file a list of all physicians, dentists and podiatrists with surgical privileges at the center and the privileges assigned to each by the medical staff.

(9) The center shall maintain a complete and up-to-date operating room register.

(10) The following equipment shall be available in the operating rooms: cardiac monitor, resuscitator, defibrillator, suction machine, thoracotomy, tracheotomy, and abdominal laparotomy sets.

(11) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(12) Rules and regulations governing the use of the operating rooms shall be posted.

(13) All physicians', dentists', or podiatrists' orders shall be in writing and signed by the physician, dentist, or podiatrist.

(14) In all cases other than those requiring only local infiltration anesthetics, a physician anesthesiologist or physician anesthetist or dentist anesthetist (or a registered nurse anesthetist acting under the direction of the operating surgeon) shall administer the anesthetics and remain present during the surgical procedures and until the patient is fully recovered from the anesthetics.

(15) The physician, dentist, or podiatrist in charge of the patient shall be responsible for seeing that tissue removed during surgery is delivered to the center's pathologist and that an examination and report is made on such tissue, where required by the center's written policies.

(16) Voluntary interruption of pregnancies.

[(a)] All ambulatory surgical centers shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810 and any regulations promulgated pursuant to those statutes.

[(b) There shall be a twenty-four (24) hour waiting period between the signing of an informed consent and the performance of a voluntary interruption of first trimester pregnancy in an ambulatory surgical center, unless an emergency situation endangers the life of the woman.]

[(c) Second and third trimester voluntary interruption of pregnancies shall not be performed in an ambulatory surgical center.]

Section 6. Recovery Room Services. (1) The center shall have at least one (1) post-anesthesia recovery room.

(2) There shall be adequate staff available in the recovery room so that no patient is left alone at any time.

(3) A registered nurse shall be available to the recovery room at all times.

(4) The person(s) staffing this area shall be adequately trained in all aspects of postoperative and post-anesthetic care.

(5) A nursing note on all patients shall be recorded by the recovery room nurse, noting postoperative abnormalities or complications, and stating the pulse, respiration, blood pressure, presence or absence of swallowing reflex and cyanosis and the general condition of the patient.

(6) Available equipment shall include suction machine, stethoscope, sphygmomanometer, emergency crash cart, necessary drugs, and oxygen.

(7) Patient accommodations.

(a) The surgical center shall provide suitable accommodations for all its patients. There shall be adequate floor space, furnishings, bed linens, and such other utensils, equipment and supplies as are reasonably required for the proper care of the patients accommodated.

(b) A satisfactory bed and mattress and one (1) or more pillows shall be provided for each patient.

Section 7. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from licensed community or institutional pharmacies.

(2) The center shall provide appropriate methods and procedures for storage, control and administering of drugs and biologicals, developed with the advice of a licensed pharmacist. Drugs shall be properly labeled by the pharmacist for individual patients.

(3) All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical and Nurse Practice Acts. The medical record shall include a record of each dose administered including date and

time of administration, type of medication, dosage, method of administration, name of prescribing physician, and name of person who administered the medication.

(4) Controlled substances. Controlled substances shall be kept under double lock, (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the patient; the date, time; kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it. In addition, there shall be a recorded and signed Schedule II controlled substances count daily conducted by a member of the nursing staff and Schedule III, IV and V controlled substances count once per week by a member of the nursing staff.

Section 8. Radiology Services. (1) The center shall provide radiology services directly through an agreement with a licensed hospital, or through an independent radiology service. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. In either case:

(2) 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;

(3) A physician specializing in radiology shall supervise the department and interpret films that require specialized knowledge for accurate reading;

(4) Signed reports shall be promptly entered into the medical record and duplicate copies kept in the department; and

(5) X-ray examinations shall be made only upon the request of a physician, dentist or podiatrist.

Section 9. Laboratory Services. (1) The center shall provide laboratory services directly through its own licensed laboratory, through an agreement with a laboratory in a licensed hospital, or through an agreement with a licensed laboratory nearby. The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.030 and any regulations promulgated thereunder unless it is a part of a licensed hospital. In either case:

(2) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist;

(3) The laboratory shall provide tissue pathology and diagnostic cytology examinations. Tissues removed from patient at surgery shall be examined by a physician specializing in pathology where required by the center's written policies; and

(4) All laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 10. Utilization Review. (1) The surgical center shall have in effect a plan for utilization review of their services on at least a quarterly basis by a committee of physicians and/or dentists and podiatrists who have no financial interest in the center.

(2) Reviews shall be made of admissions and professional services furnished including utilization of surgical services and tissue reports.

C. HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 18, 1985
FILED WITH LRC: October 15, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 1985 of their desire to appear and testify at the hearing: Hughes Walker, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: A small number of licensed ambulatory surgery centers. The change in the regulation will have little or no effect since it simply makes the regulation consistent with a previous court ruling which rendered certain sections of the regulation relating to abortions to be unconstitutional.

(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: The proposed amendments will have no effect on reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The proposed amendments will not result in any increased costs to the cabinet.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The proposed amendment will have no effect on reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The provisions being deleted are unconstitutional.

(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. N/A

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

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

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

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

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised <u>September 26, 1985</u> [October 1, 1984], which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

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

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

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30the of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) <u>Freestanding (non-hospital based) facilities will be arrayed and</u> [Allowable costs will then be indexed for inflation for the rate year, and] the maximum set at <u>102</u> [105] percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at <u>135</u> [165] percent of <u>102</u> [105] percent of the median of allowable trended [and indexed] costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, <u>1985</u> [1982], so that the maximum payment amount for the prospective uniform rate year will be at <u>102</u> [105] percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for <u>freestanding</u> SNFs and basic ICFs, except that <u>the</u> [no] maximum (upper limit) shall be <u>set at 110 percent of the median of the array</u> [imposed].

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to

maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

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

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

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

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

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth in the Social Security Act (as amended by the Deficit Reduction Act of 1984) and shown herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) The Social Security Act, Section 1861(v)(1)(O) (as published in the Commerce Clearing House Medicare/Medicaid Guide) specifies the following:

"(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of the date of the enactment of this subparagraph, (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner."

"(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984."

"(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this title."

(b) The Social Security Act, Section 1902(a)(13) (as published in the Commerce Clearing House Medicare/Medicaid Guide) further specifies the following:

"(B) That the state shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals, skilled nursing facilities, and intermediate care facilities can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1861(v)(1)(O)."

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

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

(a) The year-end cost report shall contain

information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

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

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

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

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

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

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

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

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

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

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Each ICF which admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:

(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF; and

(b) The incentive payment may be paid for more than ninety (90) covered days of care only if all such days are prior to February 1, 1986.

(20) Each ICF which admits a recipient from an SNF on or after February 1, 1986 as a result of a change of patient status (from SNF to ICF) shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.

(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.

(22) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

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

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

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year [and increased by a percentage] so as to reasonably take into account economic conditions and trends. [Such percentage increase shall be known as an inflation factor].

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities,

or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

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

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
[$26.99 & below*	-	-]
$27.00 & below [- 27.99]	$.92 [1.38]	$.58 [.87]
28.00 - 28.99	$.86 [1.29]	$.50 [.75]
29.00 - 29.99	$.78 [1.18]	$.41 [.62]
30.00 - 30.99	$.70 [1.06]	$.32 [.47]
31.00 - 31.99	$.61 [.92]	$.21 [.31]
32.00 - 32.99	$.51 [.76]	$.09 [.13]
33.00 - 33.95 [35.05]	$.35 [.53]	-

Maximum Payment $33.95 [35.05]

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below*	-	-
57.00 - 62.99	$1.38	$.87
63.00 - 68.99	$1.29	$.75
69.00 - 74.99	$1.18	$.62
75.00 - 80.99	$1.06	$.47
81.00 - 86.99	$ .92	$.31
87.00 - 92.99	$ .76	$.13
93.00 - 99.06 [98.99]	$ .53	-

Maximum Payment $99.06

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

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

(Effective 8-3-85 [7-1-84])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below	$.92	$.58
37.00 - 38.99	.86	.50
39.00 - 40.99	.78	.41
41.00 - 42.99	.70	.32
43.00 - 44.99	.61	.21
45.00 - 46.99	.51	.09
47.00 - 48.72	.35	-
[$36.99 & below*	-	-
37.00 - 38.99	$1.38	$.87
39.00 - 40.99	$1.29	$.75
41.00 - 42.99	$1.18	$.62
43.00 - 44.99	$1.06	$.47
45.00 - 46.99	$ .92	$.31
47.00 - 48.99	$ .76	$.13
49.00 - 52.39	$ .53	-]

Maximum Payment $48.72* [52.39**]

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

[*]*The maximum payment for hospital based skilled nursing facilities is set at $65.77 [84.14].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 [105] percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 [105] percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 [1982] and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 [105] percent of the median is a lower dollar amount than has been currently set.

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

(1) First recourse shall be for the facility to request in writing to the Director, Division

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

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

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

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

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

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

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a

skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

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

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

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after September 26, 1985 except as otherwise specified herein [October 1, 1984].

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 25, 1985
FILED WITH LRC: September 26, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 1985 at 9 a.m. in the Department of Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 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: Potentially 87 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: $100,000-$200,000 (costs)*
2. Continuing costs or savings: $100,000-$200,000 (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:
*Assumes services could have been provided in regular ICF's at average cost of $32.70.
**Assumes equalization of patients served in second and succeeding years at first year level due to bed conversion or other factors.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

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

904 KAR 1:250. Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 194.030(6), 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Medical Assistance Program and is applicable for both the categorically and medically needy.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Medical Assistance Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary policies for programs administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Material. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal Medicaid regulations at 42 CFR Parts 430-456, and interim final regulations at 42 CFR Parts 430-456, effective October [July] 1, 1985. The regulations contain federal supplementary policies, interpretations and implementing instructions for the Medical Assistance Program as authorized by Title XIX of the Social Security Act.

(2) Federal "State Medicaid Manual," effective October [July] 1, 1985. The "State Medicaid Manual" contains federal interpretations and clarifications of policy relating to implementation of the Medical Assistance Program.

(3) Federal action transmittals and program memoranda issued by the Health Care Financing Administration as follows: HCFA-AT-79-63, 79-72, 79-98, 80-9, 80-59, 81-23, 81-33, 81-35, 82-1, 82-2, 82-20, 83-1, 83-4, 83-7, 83-8, 83-11, 84-1, 84-2, 84-4, 84-5, 84-10, 84-16, 85-1, and HCFA PM-85-4, 85-10, and 85-13, effective October [July] 1, 1985. Action transmittals and program memoranda contain federal instructions relating to implementation of the Medical Assistance Program.

(4) Federal transmittal notices issued by the Health Care Financing Administration as follows: DQC-1-82, 10-82; DPO-76-81, 77-81, 78-81; MCD-46-81, 48-81, 55-81, 61-81, 62-81, 64-81, 67-81, 82-81, 86-81, 87-81, 89-81, 92-81, 1-82,

2-82, 6-82, 7-82, 10-82, 14-82, 16-82, 17-82, 18-82, 19-82, 25-82, 26-82, 28-82, 30-82, 33-82, 34-82, 35-82, 38-82, 41-82, 42-82, 50-82, 52-82, 2-83, 5-83, 9-83, 11-83, 12-83, 13-83, 14-83, 15-83, 19-83, 20-83, 26-83, 28-83, 29-83, 30-83, 35-83, 39-83, 40-83, 42-83, 1-84, 6-84, 7-84, 8-84, 9-84, 11-84, 13-84, 14-84, 15-84, 16-84, 18-84, 20-84, 23-84, 24-84, 25-84, 26-84, 27-84, 29-84, 34-84, 35-84, 36-84, 39-84, 48-84, 50-84, 51-84, 55-84, 2-85, 4-85, 5-85, 6-85, 8-85, 10-85, 11-85, 14-85, 18-85, 19-85, 21-85, 22-85, 23-85, 24-85, [and] 25-85, 27-85, 28-85, 29-85, 30-85, 31-85, 32-85, 33-85, 34-85, 36-85, 37-85, 38-85, 39-85, 41-85, 42-85, and 43-85, effective October [July] 1, 1985. Transmittal notices contain federal clarifications of policy relating to implementation of the Medical Assistance Program.

(5) Medicare and Medicaid Guide, Volumes I, II, III, and IV, as published by the Commerce Clearing House, Inc., with the following related new developments transfer binders: 1981-1, 1981-2, 1982, 1983-1, 1983-2, and 1984-1, effective October [July] 1, 1985. The Medicare and Medicaid Guide contains reprints of federal laws and regulations relating to the Medicare and Medicaid programs; reprints of Medicare/Medicaid related court decisions; Medicare principles of reimbursement; summaries of state plan characteristics; and other items of general information relating to the Medicare and Medicaid programs. Although the cabinet is bound by federal Medicaid law and regulations in the implementation of the Medical Assistance Program, the Guide is used principally as supplementary material for reimbursement issues in situations where the cabinet's vendor reimbursement system uses the Medicare cost principles in unaddressed areas.

(6) State Medicaid Program policies and procedures manuals and letters issued by the cabinet, and which contain benefit descriptions and operating instructions used by agency staff and participating vendors in the provision of, and billing for, Medical Assistance benefits provided eligible program recipients, as follows:

(a) Home and Community Based Services Waiver Project Adult Day Health Care Services, effective October [July] 1, 1985;

(b) Alternative Intermediate Services/Mental Retardation Project, effective October [July] 1, 1985;

(c) Birthing Center Services, effective October [January] 1, 1985;

(d) Community Mental Health Benefits, effective July 1, 1985;

(e) Dental Benefits, effective October [July] 1, 1985;

(f) Early and Periodic Screening, Diagnosis and Treatment Benefits, effective July 1, 1985;

(g) Family Planning Benefits, effective October [July] 1, 1985;

(h) Hearing Services Benefits, effective October [July] 1, 1985;

(i) Home and Community Based Services Waiver Project, effective October [July] 1, 1985;

(j) Home Health Benefits, effective October [July] 1, 1985;

(k) Hospital Services Benefits, effective October [July] 1, 1985;

(l) Independent Laboratory Services Benefits, effective October [July] 1, 1985;

(m) Intermediate Care Facility Benefits, effective October [January] 1, 1985;

(n) Mental Hospital Services Benefits, effective October [July] 1, 1985;

(o) Nurse Anesthetist Services, effective July 1, 1985;

(p) Nurse Midwife, effective October [July] 1, 1985;

(q) Pharmacy Services, effective October [July] 1, 1985;

(r) Physician Services Benefits, effective October [July] 1, 1985;

(s) Primary Care Benefits, effective October [July] 1, 1985;

(t) Rural Health Clinic Benefits, effective October [July] 1, 1985;

(u) Skilled Nursing Facility Benefits, effective October [January] 1, 1985;

(v) Ambulance Transportation Benefits, effective May 16, 1984, as revised;

(w) Vision Services Benefits, effective October [July] 1, 1985;

(x) Podiatry Services, effective October [July] 1, 1985;

(y) Ambulatory Surgical Center Benefits, effective July 1, 1985;

(z) Renal Dialysis Center Benefits, effective October [July] 1, 1985;

(aa) General Provider Letter A-8, effective July 1, 1985;

(bb) Medical Director's Letter dated April 26, 1985, effective July 1, 1985; and

(cc) EDS Federal Hospital Letter (as fiscal agent for the Medicaid Program) dated April 1, 1985, effective July 1, 1985.

Section 3. All documents included by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

JACK F. WADDELL, COMMISSIONER
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 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: Potentially all Medicaid providers and recipients.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *Any cost impact is shown in the specific program regulation relating to the particular issue that may be involved.

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 2:116. Low income home energy assistance program.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility and benefits criteria for each of two (2) [three (3)] components of energy assistance, subsidy [, hardship,] and crisis [emergency heating assistance] under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household or authorized representative of the household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and benefit amount in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Definitions. Terms used in HEAP are defined as follows:
(1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.
(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.
(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.
(4) "Economic unit" is one (1) or more persons sharing common living arrangements.
(5) "Subsidy component" is that portion of benefits reserved as energy assistance for heating.
[(6) "Hardship component" is that portion of benefits reserved for energy crisis assistance after the subsidy component is terminated. The hardship component is for eligible households who are without heat.]
(6) [(7)] "Crisis [Emergency heating assistance] component" is that component administered by local organizations under contract with the cabinet to provide fuel, heaters, blankets and/or sleeping bags, [or] vouchers to purchase these items, or minor repair of the heating system to eligible households who are without heat, or will be without fuel within five (5) days, or receive a notice of disconnection of service, or require a heat system repair to obtain adequate heat [or would be without heat before a fuel supply could be delivered].

Section 3. Eligibility Criteria. (1) A household must meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy [, hardship,] and crisis [emergency heating assistance] components:
(a) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.
(b) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$418 [415]	$ 5,775 [4,980]
2	646 [560]	7,755 [6,720]
3	811 [705]	9,735 [8,460]
4 [or more]	976 [850]	11,715 [10,200]
5	1,141	13,695
6	1,306	15,675

(c) [If federal law prohibits setting income eligibility limits below 100 percent of poverty, then] For each household member more than six (6) [four (4)], the above income eligibility limitation for six (6) [four (4) or more] will be increased by $165 [145] monthly or $1,980 [1,740] yearly for each additional household member.

(d) The household must have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if said cash is income considered under paragraph (a) of this subsection.

[(e) Applicants for the hardship component must attest that an immediate need for energy exists because the household is without heat.]

(e) [(f)] Applicants for the crisis [emergency heating assistance] component must be without heat, or will be without fuel within five (5) days, or have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat [or would be without heat before a fuel supply can be delivered].

(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits [, hardship, and the emergency heating assistance components].

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis [hardship] components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit [payment] relative to energy costs. In the subsidy component, the highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component will be made for the full benefit amount based on [program component,] type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$138	$150
$401 - 800	$120	$132
over $800	---	$113

Scale B.
Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$125	$137
$401 - 800	$107	$119
over $800	---	$100

[Hardship Component

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity, Kerosene

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$276	$300
$401 - 800	$239	$263
over $800	---	$226

Scale B.
Energy Sources: Natural Gas, Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or more
$ 0 - 400	$250	$274
$401 - 800	$213	$237
over $800	---	$200]

(2) If the cabinet receives only a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy [or hardship] component may be reduced proportionately.

(3) Benefits to eligible households under the crisis [emergency heating assistance] component shall be in the form of fuel or other energy for heating, heaters, blankets, and/or sleeping bags, [or] vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency will determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 [$150] total benefit value per eligible household [, unless the minimum amount of fuel that a vendor will supply exceeds that value, in which case the amount necessary to obtain delivery may be provided as benefit not to exceed $300 per eligible household].

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as

follows:

(1) Whenever feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

[(2) Payment under the hardship component is authorized by a one (1) party check made payable to the energy provider (landlord) only, unless the provider refuses to accept the payment on behalf of the recipient and deliver or restore service, whereupon, the payment will be made to the recipient only. All payments will be mailed to the recipient.]

(2) [(3)] When a two (2) party check is not issued under the subsidy [or hardship] component, the recipient shall sign a statement as part of the application prior to receipt of funds affirming that benefits received under HEAP shall be utilized solely for home energy.

(3) [(4)] Under the subsidy [and hardship] component, at the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed the maximum for the primary source of energy for heating [under the appropriate component]. The household will decide how to divide payment if more than one (1) provider is used.

(4) [(5)] For the crisis [emergency heating assistance] component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component will be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, and/or sleeping bags, restoration or continuation of service, or upon repair of the heating system.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. The cabinet or its representative shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the subsidy component shall be accepted as follows:

(a) Households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits on the basis of 100 percent disability may apply beginning October 21, 1985 [15, 1984] and ending no later than October 31, 1985 [26, 1984].

(b) Applications shall be accepted from all households beginning November 18, 1985 [12, 1984] and ending no later than December 31, 1985 [1984].

(2) Applications for the crisis [hardship] component shall be accepted beginning January 6, 1986 [7, 1985] and ending no later than April 30, 1986 [May 31, 1985].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy and crisis [hardship] components shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or April 30, 1986 [May 31, 1985], whichever comes first.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

[(5) The emergency heating assistance component may be implemented by the contracting agency on February 1, 1985. Benefits shall be provided until funds are exhausted or May 31, 1985, whichever comes first.]

Section 9. Allocation of Funds. (1) Up to fifteen (15) [thirteen (13)] percent of the total HEAP allocation shall be reserved for weatherization assistance. Up to $500,000 of this allocation shall be reserved for the Gas Furnace Retrofit Pilot Project.

[(2) Up to two (2) percent or a minimum of $500,000 shall be reserved for the Gas Furnace Retrofit Pilot Project.]

(2) [(3)] Up to $6,000,000 [4,000,000] shall be reserved for the crisis [hardship] component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by county, based upon the poverty level of the counties in accordance with the 1980 Census. Fifteen (15) percent of the funds shall be held by the contracting agency as a contingency fund to be allocated in any county of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 14, 1986, all unobligated allocations shall revert to the contingency fund for low income home energy assistance to be distributed at the discretion of the contracting agency. [Fifty (50) percent of the funds reserved under the hardship component shall be available for households whose primary source of energy for heating is electricity or natural gas and fifty (50) percent shall be available for all other sources of energy. Any funds remaining available from the subsidy component shall be made available under the hardship component.]

(3) [(4)] Remaining benefit funds available under Public Law 97-35 shall be reserved for the subsidy component. Fifty (50) percent of the funds available under the subsidy component shall be reserved for households eligible to apply beginning October 21, 1985 [15, 1984] and ending no later than October 31, 1985 [26, 1984]. The remaining fifty (50) percent plus any funds remaining available after October 31, 1985 [26, 1984] shall be reserved for households applying beginning November 18, 1985 [12, 1984] and ending no later than December 31, 1985 [1984]. Any funds remaining available under the subsidy component after December 31, 1985 [1984] shall be made available under the crisis [hardship] component contingency fund held by the contracting agency.

(4) [(5)] Up to $500,000 of any subsidy component funds remaining unobligated may, at the discretion of the Department for Social Insurance, be reserved for households who are without heat under the contracting agency administered crisis component, if all funds allocated and otherwise made available to the

crisis component are obligated prior to March 15, 1986. [shall be reserved for administration and implementation of the emergency heating assistance component.]

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated adversely [differently] than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 18, 1985
FILED WITH LRC: September 27, 1985 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 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 150,000 low income households.

(a) Direct and indirect costs or savings to those affected: Approximately $21.3 million benefit funds will be provided to eligible households.

1. First year: Approximately 114,000 households in the subsidy component will receive an average benefit of $129, and approximately 35,000 households in the crisis component will receive an average benefit of $171.

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: All households must apply for benefits under this program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Up to 10 percent of LIHEAP block grant funds will be reserved for administrative costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulation.

(3) Assessment of anticipated effect on state and local revenues: All benefits apply to energy costs of low income households

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable; program implementation governed by federal law & regulation

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Low Income Home Energy Assistance Program (LIHEAP) is 100% federally funded and this regulation is promulgated in accordance with the LIHEAP block grant application and plan narrative.

Tiering:
Was tiering applied? No. Not applicable to Low Income Home Energy Assistance Program regulations.

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

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

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

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

(2) Materials incorporated by reference shall be construed and interpreted in such a manner as

to be consistent with the intent of agency policy as reflected in Kentucky administrative regulations, and shall be considered the agency statement of policy with regard to issues not otherwise addressed in Kentucky administrative regulations.

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

(1) Department for Social Insurance Manual of Operations, effective October [July] 1, 1985. The Manual of Operations provides operating instructions, procedural detail, and technical clarification for use of the department's field staff in implementing programs, under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; and medical assistance.

(2) Department for Social Insurance Manual of Forms, effective October [July] 1, 1985. The Manual of Forms provides forms with instructions for completion, usage, distribution and files maintenance for use of the department's field staff in implementing programs under the authority of the department, including: aid to families with dependent children; refugee assistance; home energy assistance; child support enforcement; state supplementary payments; medical assistance; and the food stamp program.

(3) Federal regulations at 45 CFR Parts 16, 74, and 95, effective October 1, 1985 [May 16, 1984]. Part 16, Procedures of the Departmental Grant Appeals Board, provides requirements and procedures applicable to resolution of certain disputes arising under several assistance programs funded by the United States Department of Health and Human Services. Part 74, Administration of Grants, establishes uniform requirements for the administration of grants provided under the authority of the United States Department of Health and Human Services, and principles for determining costs applicable to activities assisted by Department of Health and Human Services grants. Part 95, General Administration - Grant Programs (Public Assistance and Medical Assistance), establishes requirements of the United States Department of Health and Human Services for various administrative matters relating to grant programs, including time limits for states to file claims, cost allocation plans, and conditions for federal financial participation for automatic data processing equipment and services.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 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 recipients of assistance programs administered by the Department for Social Insurance.
(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:
*Costs or savings are shown in the impact analysis for the governing regulations which show any policy changes.

Tiering:
Was tiering applied? No. Not applicable for public assistance regulations.

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

904 KAR 2:170. Incorporation by reference of materials relating to the Child Support Program.

RELATES TO: KRS 205.795
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the Child Support Program in accordance with Title IV-D of the Social Security Act and KRS 205.710 to 205.800, [and] 205.992, and KRS 405.400 to KRS 405.530. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Child Support Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Child Support Program, subject to the provisions contained in 904 KAR 2:140, Section 1, Supplementary Policies

for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following listed materials are hereby incorporated by reference, effective on the date shown:

(1) Federal child support regulations at 45 CFR Parts 300-399, which set forth the requirements and guidelines for the administration of the Child Support Program, effective October [July] 1, 1985;

(2) Federal Office of Child Support Enforcement Action Transmittals, which provide federal program instructions for the implementation of the child support enforcement program in accordance with federal laws and regulations, as follows: OCSE-AT-75-5, 75-6, 76-1, 76-2, 76-5, 76-7, 76-8, 76-9, 76-14, 76-21, 76-22, 76-23, 77-3, 77-14, 78-2, 78-5, 78-6, 78-8, 78-16, 78-18, 79-2, 79-3, 79-6, 79-7, 79-8, 80-5, 80-9, 80-11, 80-17, 81-7, 81-12, 81-26, 82-17, 83-15, 83-18, and 84-05, effective October 1, 1984;

(3) Department for Social Insurance Child Support Manual of Procedures, which provides operational instructions and procedural detail for the implementation of the child support enforcement program, effective October [July] 1, 1985;

(4) Department for Social Insurance Child Support System Handbook, which provides systems and data processing instructions for the implementation of the child support enforcement program, effective October [July] 1, 1985; [and]

(5) Department for Social Insurance Child Support Action Memorandums, which provide program clarifications, instructions, and procedural detail for the implementation of the child support enforcement program, as follows: DCSE-AM-82-07, 82-36, 83-16, 83-21, 83-30, 83-31, 83-38, 83-39, 83-48, 84-10, 84-16, 84-18, 84-19, 84-20, 84-29, 84-34, 84-36, [84-41,] 85-10, 85-19, 85-22, and 85-27, [and 85-15] effective October [July] 1, 1985; and [.]

(6) Department for Social Insurance Child Support Administrative Process Manual, which provides operational instructions and procedural detail for the implementation of administrative procedures in the child support enforcement program, effective October 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 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: 3,600 AFDC cases discontinued to remain eligible for IV-D services without payment of fee.
(a) Direct and indirect costs or savings to those affected:
1. First year: $993,600 collections passed on to non-AFDC applicants.
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: $110,400
1. First year:
2. Continuing costs or savings: $170,000 state share of expenditures for personnel, $59,600 incentives to state/local jurisdictions.
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: Mandated by P.L. 98-378.

Tiering:
Was tiering applied? No. Not applicable to program.
*This analysis for continuation of services only since the remaining material is revision of material previously submitted with no major changes in impact.

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

904 KAR 3:090. Incorporation by reference of materials relating to the Food Stamp Program.

RELATES TO: KRS 194.030(6)
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977 as amended, and 7 CFR Parts 251-282. KRS 194.050 authorizes the Secretary, Cabinet for Human Resources, to issue regulations necessary for the operation of the cabinet's programs. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the Food Stamp Program.

Section 1. Incorporation by Reference. The cabinet shall incorporate by reference materials used in the implementation of the Food Stamp Program, subject to the provisions contained in

904 KAR 2:140, Section 1, Supplementary Policies for Programs Administered by the Department for Social Insurance.

Section 2. Listing of Incorporated Materials. The following materials are hereby incorporated by reference, effective on the date shown:

(1) Federal food stamp regulations at 7 CFR Parts 250, 251 and 271-282, which set forth the federal requirements and guidelines for the administration of the Food Stamp Program and federal food stamp general notices published through the Federal Register, effective July 1, 1985;

(2) Department for Social Insurance Food Stamp Handbook, which provides operating instructions, procedural detail and technical clarification for use by the department's field staff in administering the Food Stamp Program, effective October [July] 1, 1985; and

(3) Federal food stamp regional letters, which set forth federal clarification of federal food stamp regulations, as follows: 80-5, 80-5.1, 80-6, 80-7, 80-8, 80-9, 80-10, 80-11, 80-13, 80-15, 80-16, 80-17, 80-19, 80-21, 80-22.1, 80-23, 80-30, 80-31, 80-32, 80-33, 80-34, 80-36, 80-38, 80-39, 80-41.1, 80-42, 80-43, 80-44, 80-47, 80-48, 80-49, 80-50, 80-51, 80-52, 80-53, 80-54, 80-58, 80-58.1, 80-58.2, 80-59, 80-62, 80-67, 80-71, 80-72, 80-73, 80-76.1, 80-77, 80-78, 80-79, 80-80, 80-81, 80-82, 80-83, 80-85, 80-86, 80-87, 80-88, 80-89, 80-91, 80-92, 80-93, 80-96, 80-98, 80-99, 80-100, 80-101, 80-102, 80-103, 80-105, 80-106, 81-3, 81-3.1, 81-3.2, 81-4, 81-4.1, 81-4.2, 81-4.3, 81-5, 81-6, 81-8, 81-9, 81-10, 81-10.1, 81-10.2, 81-11, 81-12, 81-13, 81-14, 81-15, 81-16, 81-17, 81-18, 81-19, 81-20, 81-20.1, 81-20.2, 81-21, 81-22, 81-23, 81-24, 81-25, 81-26, 81-27, 81-28, 81-29, 81-30, 81-30.1, 81-33, 81-34, 81-34.1, 81-36, 81-37, 81-38, 81-39, 81-40, 81-41, 81-42, 81-43, 81-44, 81-45, 81-46, 81-46.1, 81-47, 81-48, 81-49, 81-50, 81-51, 81-52, 81-53, 81-54, 81-55, 81-57, 81-57.1, 81-58, 81-59, 81-60, 81-62, 81-64, 81-65, 81-66, 81-67, 81-68, 82-2, 82-3, 82-4, 82-5, 82-6, 82-7, 82-8, 82-9, 82-10, 82-11, 82-12, 82-13, 82-14, 82-15, 82-16, 82-17, 82-18, 82-18.1, 82-19, 82-20, 82-21, 82-23, 82-25, 82-25.1, 82-26, 82-27, 82-29, 82-29.1, 82-30, 82-31, 82-32, 82-35, 82-36, 82-37, 82-38, 82-39, 82-40, 83-1, 83-1.1, 83-1.2, 83-2, 83-2.1, 83-3, 83-4, 83-5, 83-6, 83-7, 83-9, 83-12, 83-14, 83-15, 83-17, 83-18, 83-19, 83-21, 83-22, 83-24, 83-25, 83-26, 83-27, 83-28, 83-30, 83-31, 83-33, 83-36, 84-1, 84-2, 84-3, 84-4, 84-5, 84-6, 84-7, 84-8, 84-9, 84-10, 84-11, 84-12, 84-13, 84-14, 84-15, 84-16, 84-17, 84-18, 84-19, 84-20, 84-21, 84-22, 84-23, 84-24, 84-26, 84-27, 84-28, 84-29, 84-30, 84-31, 84-32, 84-33, 84-34, 84-35, 84-36, 84-37, 84-38, 84-39, 84-40, 84-41, 84-42, 84-43, 84-45, 84-46, 84-47, 84-48, and 84-49, effective January 1, 1985.

(4) Federal Food and Nutrition Service South East Regional Office (SERO) regulations supplement which sets forth federal policy clearances of federal regulations specified in subsection (1) of this section, effective October [July] 1, 1985.

Section 3. All documents incorporated by reference herein may be reviewed during regular working hours in the Division of Management and Development, Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky.

JACK F. WADDELL, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: September 27, 1985
FILED WITH LRC: October 8, 1985 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for November 21, 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 November 16, 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 households applying for or receiving food stamps.

(a) Direct and indirect costs or savings to those affected: Not significant

1. First year: Minimal

2. Continuing costs or savings: Unknown

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

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: These revisions will keep the state's practices in compliance with federal requirements.

(a) Direct and indirect costs or savings: Minimal

1. First year: Minimal

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: Insignificant

(3) Assessment of anticipated effect on state and local revenues: No significant impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes are in compliance with federal requirements.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable to these changes as federal requirements mandate uniform statewide implementation/application of policies.

PROPOSED REGULATIONS RECEIVED THROUGH OCTOBER 15

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:190. Rules of practice and procedure for hearings before the Kentucky Real Estate Commission.

RELATES TO: KRS 324.160
PURSUANT TO: KRS 13A.100(3)
NECESSITY AND FUNCTION: To set forth practices and procedures for hearings held before the Kentucky Real Estate Commission. These rules and of practice and procedures are designed to inform the complainants and the real estate licensees of the steps to be followed in processing complaints through an administrative hearing before the Kentucky Real Estate Commission.

Section 1. Complaint Review and Investigation. (1) Any complaint filed with the commission that fails to set forth a legitimate issue under KRS Chapter 324 shall be dismissed by the commission without further investigation or hearing.

(2) If a compliant filed with the commission sets forth an issue that, if proved, would entail a violation of KRS Chapter 324, that complaint shall be assigned to a commission investigator for investigation in accordance with KRS 324.150.

(3) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case without an administrative hearing if no factual controversy is presented that could result in a violation of KRS Chapter 324.

(4) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case, upon advice of its general counsel, if insufficient evidence is discovered during the investigation to justify further proceedings.

(5) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may set a case for hearing in accordance with KRS 324.151 and 324.170.

Section 2. Motions and Requests for Withdrawal of Complaints or Dismissal. (1) All motions of any nature must be in writing and filed with the Kentucky Real Estate Commission. Motions to dismiss or other motions affecting a substantive issue must be considered by a quorum of the commission members. Procedural issues, including motions for continuances or discovery motions may be ruled upon by the chairman of the commission or the hearing officer appointed by the commission.

(2) Motions for a continuance of a hearing shall only be granted for good cause. A scheduling conflict of a party, a witness or an attorney for a party shall not be good cause for a continuance unless the request for the continuance is received within ten (10) working days of receipt of the notice of hearing.

(3) A complainant has the right to withdraw a complaint within twenty (20) days of the date of the complaint or prior to the commission's receipt of an answer filed in accordance with KRS 324.151, whichever is earlier. Complaints may be withdrawn subsequent to this deadline only upon a showing of good cause and with the approval of the commission.

Section 3. Discovery. (1) In all cases for a hearing before the commission, discovery through written or oral depositions, interrogatories, or requests for admission shall be permitted; provided that:

(a) The time, place and method of discovery imposes no undue burden upon the witness and other parties;

(b) Any oral deposition must be taken where the witness resides or does business;

(c) The discovery will be completed and transcribed prior to the hearing date; and

(d) Copies of all discovery documents and depositions are filed with the commission at the cost of the party requesting discovery.

(2) The chairman of the commission or the hearing office appointed in that case shall have the right to deny, limit, restrict or mandate discovery based upon the facts set forth in subsection (1) of this section.

(3) Any notice of deposition must be served on the general counsel of the commission and the general counsel shall have the right to attend and participate in all depositions or other discovery proceedings pertaining to a case before the commission.

(4) The commission's general counsel may, in his discretion, allow the parties to a case before the commission to review the investigative file of that case. If disclosure of said file prior to the hearing may impede or obstruct the prosecution of that case, the investigative file shall not be disclosed until the termination of the administrative proceedings.

Section 4. Pre-Hearing Conferences and Settlement Agreements. (1) Any party or the general counsel may request and the chairman of the commission or appointed hearing officer may order that a pre-hearing conference take place in a given case. A pre-hearing conference shall be attended by all parties, attorneys and the general counsel; a hearing officer appointed by the commission may attend said conference.

(2) The purpose of a pre-hearing conference shall be to explore the possibility of settlement, prepare stipulations, clarify issues, address procedural motions and such other matters as will promote the orderly and prompt conduct of the hearing.

(3) Settlement agreement may be negotiated between the general counsel for the commission, the complainant and the respondent. All settlement agreements must clearly provide that the parties understand that they are waiving their right to an administrative hearing and that the settlement agreement, if accepted and adopted by the commission, will become a final order.

(4) Upon reviewing a proposed settlement agreement, the commission may accept or reject said proposal in its entirety; no alterations to such an agreement may become a final order without the agreement and consent of all parties to the case.

Section 5. Hearings. (1) The chairman of the commission or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the procedure of the hearing and to admit or exclude testimony or other evidence.

(2) Evidence on behalf of the complainant shall be presented by the general counsel for the commission, unless the complainant chooses to employ a private attorney to present said evidence. In all cases, the general counsel shall have the right to question witnesses and offer evidence into the record.

(3) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the chairman of the commission or the hearing officer appointed to conduct the hearing.

(4) Two (2) or more proceedings under the act may be joined by the commission in its discretion.

(5) All hearings before the commission shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. General counsel;
2. Complainants;
3. Respondents;

(b) Witnesses and evidence on behalf of the complainant;

(c) Additional witnesses and evidence presented by general counsel;

(d) Witnesses and evidence on behalf of respondent;

(e) Closing statements in the following order:

1. Respondents;
2. Complainants;
3. General counsel.

(6) Testimony to be considered by the commission may be taken by deposition, in accordance with KRS 324.190(3). A party or witness will be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and that the other parties will have an opportunity to cross-examine at said deposition.

Section 6. Post-Hearing Proceedings. (1) The commission shall deliberate on all cases in closed session. The specific findings of the commission shall be made in open session following the commission's deliberation.

(2) The commission shall not reconsider any final order.

(3) All final orders of the commission shall be appealable in accordance with KRS 324.210. Said appeal offers no opportunity to a de novo hearing and shall be considered on review of the transcript, briefs, and oral argument if requested by the court.

JAMES H. HUFF, Chairman

APPROVED BY AGENCY: September 23, 1985

FILED WITH LRC: September 23, 1985 at 2:30 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 22, 1985, at 9 a.m. at the offices of the Kentucky Real Estate Commission, 222 South First Street, Suite 300, Louisville, Kentucky 40202. Those interested in attending this hearing shall contact: Susan G. Stopher, Executive Director, Kentucky Real Estate Commission, 222 South First Street, Suite 300, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: This is hearing regulation to set forth published procedures for handling administrative hearings before the Kentucky Real Estate Commission.

Tiering:
Was tiering applied? No. Not applicable.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630

PURSUANT TO: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and

recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for Gun and Archery. (1) Ducks, coots and mergansers: November 28 through December 1 and December 9 through January 13.

(2) Geese:

(a) Eastern Zone: November 28 through January 20, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

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

1. Ballard quota zone: December 23 through January 31, or until such time as 4,400 Canada geese are harvested, whichever occurs first. This zone is defined as the area within the following boundary: Starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 4,400 Canada geese will be filled prior to January 31, the goose hunting season will close in the Ballard quota zone and in those portions of Ballard, McCracken, Graves, Carlisle, Hickman, Fulton and Marshall Counties in the Western Zone. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. Henderson-Union quota zone: December 23 through January 31, or until such time as 1,400 Canada geese are harvested, whichever occurs first. This quota zone includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 1,400 Canada geese will be filled prior to January 31, the goose hunting season in this zone and those portions of Lyon, Crittenden and Livingston Counties in the Western Zone will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

(3) Sora and Virginia Rails and Gallinules: November 28 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks: The daily bag limit is four (4), and may include no more than two (2) mallards (no more than one (1) of which may be a female), one (1) black duck, two (2) wood ducks, two (2) pintails, one (1) canvasback and one (1) redhead. The possession limit is the maximum number of ducks which could have legally been taken in two (2) days.

(2) Mergansers: The daily bag limit is five (5), only one (1) of which may be a hooded merganser. The possession limit is ten (10), only two (2) of which may be hooded mergansers.

(3) Coots: The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(4) Geese:

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

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

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

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

Section 3. Shooting Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except that shooting hours in the Ballard quota zone will be one-half (1/2) hour before sunrise to 2:00 p.m. for ducks, geese, coots and mergansers during the goose season in the Ballard quota zone.

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

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

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

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

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

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

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

(a) Species and seasons.

1. The season for ducks, coots and mergansers is December 26 through January 13.

2. The season for geese is December 26 through January 31, or until such time as the Ballard quota zone is closed, whichever occurs first.

3. No hunting is permitted on Sundays.

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

(b) General rules. There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole

blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from blinds and pits is furnished by the department must have his gun encased.

(c) Shooting hours. The shooting hours are one-half (1/2) hour before sunrise to 12:00 noon.

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

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

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

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

(4) Lake Barkley Wildlife Management Area.

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

(b) Blinds and pits. Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must remain within ten (10) yards of the assigned numbered blind marker within the area described as follows: Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area must be temporary.

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

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

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

(c) Shooting hours. One-half (1/2) hour before sunrise to 2:00 p.m.

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

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

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

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

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

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

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

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

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

(13) Robinson Forest Wildlife Management Area

located in Breathitt, Perry and Knott Counties is closed to all waterfowl hunting.

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

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

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

(17) Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(18) Blind and pit restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas, and the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek units of the Sloughs Wildlife management Area.

(a) Permanent blinds or pits, defined as those which are in place more than twenty-four (24) hours, must be registered on a permit issued by the U.S. Army Corps of Engineers or the Department of Fish and Wildlife Resources. Applicants for blind or pit permits must present a current Kentucky hunting license to the registration clerk. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits may be issued for each permanent blind or pit. Only one (1) permit will be issued per hunter per area. Permittees who have not constructed a pit or blind at the designated location by November 20 will forfeit their permit. Sites which become available by forfeiture may be assigned to another applicant.

(b) Blinds or pits not occupied by permittees by the opening of shooting hours of any day are available for use by other hunters on a first come-first served basis for the remainder of that day.

(c) Permittees shall not lock blinds or pits so as to prevent use by other hunters in the absence of the permittee.

(d) No blind or pit may be established less than 200 yards from any other blind or pit or waterfowl refuge.

(e) No more than four (4) persons shall occupy a blind or pit at any one time.

(f) Designated recreation areas and access points are closed to waterfowl hunting.

(g) Permanent pits or blinds must be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

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

(1) Commercial waterfowl hunting areas.

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

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

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

(2) Non-commercial waterfowl hunting areas.

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

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

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

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

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

(4) Obtaining permits and harvest reporting forms.

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

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

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

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

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and

waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

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

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

(2) Migratory goose hunting area permit holders.

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

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

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

(3) Hunter requirements.

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

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

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

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union quota zones must:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. No later than Monday and Thursday of each week, mail or take the completed original copy of the waterfowl harvest register to the address indicated on the form.

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

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

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

(4) No more than five (5) persons may occupy a single blind or pit at the same time.

(5) A hunter may possess only one (1) shotgun while occupying a blind or pit.

Section 11. Kentucky Waterfowl Stamp Requirements. (1) Persons sixteen (16) through sixty-four (64) years of age hunting wild ducks or geese shall possess, in addition to the appropriate hunting license, a Kentucky waterfowl stamp unless exempted under the provisions of KRS 150.170(3), (6), or (7).

(2) To be valid for hunting, said stamp shall be signed across the face by the bearer and fixed adhesively to the back of the bearer's hunting license. This stamp shall not be transferable.

Section 12. 301 KAR 2:200, Migratory bird hunting seasons, is hereby repealed.

G. WENDELL COMBS, Secretary
DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: September 30, 1985
FILED WITH LRC: September 30, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on November 21, 1985 at 2 p.m., in the Commission Room of the Department of Fish and Wildlife Resources central offices at Frankfort, Kentucky. Those interested in attending this hearing shall contact: William D. Graves, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the waterfowl hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($7.50 for residents) unless exempted by statute, a $7.50 migratory bird hunting and conservation stamp, and a $5.25 state duck stamp. Commercial waterfowl hunting operators will be required to purchase a $40 permit each.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union quota zones will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. In addition, commercial and non-commercial waterfowl hunting area operators in the Henderson-Union quota zone will be required to maintain harvest records and report waterfowl harvest on forms provided by the department.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation and administering the harvest registration zones.

1. First year: The estimated costs associated with establishing and carrying out the provisions of this regulation is $275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: Implementation of a new goose harvest registration zone in Henderson and Union Counties will involve additional printing, postage, manpower and enforcement expenses on an annual basis. This is estimated to be $5,000 this year.

(b) Reporting and paperwork requirements: A bi-weekly monitoring of harvest registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union quota zones. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is $110 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds occurs through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most recreational opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This type of regulation does not appear to be adaptable to the tiering process since it is specific to migratory bird hunters.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities

808 KAR 10:220. Registration exemptions - NASDAQ/NMS exemption.

RELATES TO: KRS 292.410(1)(q)
PURSUANT TO: KRS 13A.350, 292.500(3)
NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that the registration is not necessary or appropriate in the public interest or for the protection of investors, the following class of transactions is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390. The offer or sale of any security which is designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automated Quotations - National Market System (NASDAQ/NMS); any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

RONDA S. PAUL, Director
APPROVED BY AGENCY: October 11, 1985
FILED WITH LRC: October 11, 1985 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for Tuesday, November 26, 1985, at 10 a.m., local prevailing time, at the Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle
(1) Type and number of entities affected: About 2,100 companies which have securities listed on the NASDAQ system.

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

1. First year: Indeterminable.

2. Continuing costs or savings: Indeterminable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Extra self-executing exemption can save many companies

the costs associated with filing for exemptions (both the filing fees and the costs of professional and support staff services needed for a filing).
(b) Reporting and paperwork requirements: Eliminated.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Indeterminable.
2. Continuing costs or savings: Indeterminable.
3. Additional factors increasing or decreasing costs: Some costs of processing registrations and claims of exemption filed with the agency will be eliminated.
(b) Reporting and paperwork requirements: Eliminated.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation will facilitate trading in the affected securities with no adverse effect on the general public.

Tiering:
Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities

808 KAR 10:230. Fee payment - KRS 292.380(5).

RELATES TO: KRS 292.380(5)
PURSUANT TO: KRS 13A.350, 292.500(3)
NECESSITY AND FUNCTION: To provide rules to facilitate compliance with and the administration of KRS 292.380(5).

Section 1. This regulation applies to registration of redeemable securities issued by open-end management companies as those terms are defined by the Investment Company Act of 1940. The purpose of this regulation is to outline procedures for registrations, renewal of registrations, the payment of fees and the reporting of sales by companies required to do so pursuant to KRS 292.380. For purposes of fee payment and reporting of sales, a registration and a renewal of registration are considered equivalent. Both a registration period and a renewed registration period shall be termed a registration period.

Section 2. Each company required to register its securities under this regulation, hereinafter also referred to as "registrant," shall pay to the director with the initial registration of its securities an examination fee of $125 and shall pay another examination fee of $125 each time it renews that registration. Said examination fee shall be paid by a separate check each time. This examination fee shall accompany the respective application for registration or renewal.

Section 3. A registrant shall elect either subsection (1) or (2) of this section, but not both, and shall comply with that elected provision.
(1) A registrant electing this subsection shall pay to the director a registration fee of $1,200 with the application for registration or renewal of a registration. Said registration fee shall accompany the application for registration or renewal of registration. No subsequent sales report for the period covered by the registration or renewal shall be required. The registration or renewal shall cover a period of one (1) year, beginning with the date it becomes effective in the Commonwealth of Kentucky.
(2) A registrant electing this subsection shall pay to the director a registration fee of sixty (60) dollars with the application for registration or renewal. Said registration fee shall accompany the application for registration or renewal. The registration or renewal shall cover a period of one (1) year, beginning with the date it becomes effective in the Commonwealth of Kentucky.
(a) Within thirty (30) calendar days after the final day of the period of registration each registrant electing this subsection shall file with the director a sales report containing the total Kentucky sales in dollars for the registration period just ended.
(b) The sales report required in paragraph (a) of this subsection shall be accompanied with a payment to the director of a supplemental registration fee for the registration period just ended in the amount of the lesser of three-fiftieths (3/50) of one (1) percent of the total dollar amount of Kentucky sales made during the registration period reduced by sixty (60) dollars or $1,200 reduced by sixty (60) dollars. If this calculation results in a negative amount, no payment need be made to the director and no credit or refund shall be allowed for that negative amount.

Section 4. A registrant having securities registered must renew that registration on or before the closing date of the current registration period if, during the year following the expiration date of the current registration period, any Kentucky sales will be made or might be made.
(1) If the application for renewal is not filed and Kentucky sales are made, those sales shall be in violation of the Kentucky Securities Act and this regulation.
(2) When an application for renewal is filed, the payment of the examination fee must be remitted as specified in Section 2 of this regulation and the payment of the registration fee must be remitted as specified in Section 3 of this regulation. As in the initial registration, the registrant again must elect Section 3(1) or (2) of this regulation. The registrant need not make the same election made for the previous period. The examination fee and the registration fee must be paid by separate checks and both payments must accompany the application for renewal.
(3) An application for renewal should be filed at least ten (10) calendar days before the expiration of the current registration period and shall be filed no later than the last day of the current registration period.

Section 5. Any registrant electing Section 3(2) of this regulation and failing to file a sales report or failing to maintain adequate records of Kentucky sales shall be presumed to have made Kentucky sales in excess of two (2) million dollars (an amount which would require the maximum registration fee of $1,200) and shall be required to pay a registration fee of $1,140 ($1,200 less the sixty (60) dollars initial fee) within thirty (30) calendar days of the final day of the registration period for which the records are inadequate or absent.

Section 6. If any registrant fails to make any payment due pursuant to this regulation, the director may issue an order revoking the effectiveness of the registration for which the payment is due pursuant to KRS 292.390(1)(b). Any Kentucky sales made during that registration period shall then be in violation of the Kentucky Securities Act and this regulation. If the registrant has failed to make a payment due pursuant to this regulation and has renewed the registration, that renewed registration may be suspended by the director pursuant to KRS 292.390. Any Kentucky sales made during the period of suspension of a registration shall be in violation of the Kentucky Securities Act and this regulation.

Section 7. If the registrant electing Section 3(2) of this regulation desires to terminate the registration before the registration period expires, it may do so at its option. A registrant opting to terminate under this section must file the sales report required by Section 3(1)(a) of this regulation and remit the registration fee required by Section 3(1)(b) of this regulation within thirty (30) calendar days of the date of termination of the registration. If a registrant has elected Section 3(1) of this regulation and desires to terminate the registration before the registration period expires, it may do so at its option by notifying the director in writing. The registrant electing Section 3(1) of this regulation and terminating the registration before it expires need not file a sales report or pay an additional fee.

Section 8. Whenever this regulation requires that a payment be made to the director, that payment shall be made payable to the order of the Kentucky State Treasurer and delivered to the director by United States mail or any other suitable carrier to the business office of the Division of Securities of the Department of Financial Institutions.

Section 9. This regulation shall take effect April 1, 1986. All registrations applied for on or after April 1, 1986 and all renewals due on or after April 1, 1986 and applied for, shall be filed in accordance with the terms, procedures, and conditions herein.

RONDA S. PAUL, Director
APPROVED BY AGENCY: October 14, 1985
FILED WITH LRC: October 14, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for Tuesday, November 26, 1985, at 10 a.m., local prevailing time, at the Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. If no written notice of intent to attend and testify at the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending this hearing shall notify in writing: William E. Doyle, Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William E. Doyle
(1) Type and number of entities affected: Between 400 and 500 Mutual Fund companies.
(a) Direct and indirect costs or savings to those affected:
1. First year: Indeterminable.
2. Continuing costs or savings: Indeterminable.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Entities electing to pay the maximum will save expense associated with maintaining separate records for and reporting Kentucky sales.
(b) Reporting and paperwork requirements: Sales report (KY sales) for entities not electing to pay the maximum fees.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Indeterminable.
2. Continuing costs or savings: Indeterminable.
3. Additional factors increasing or decreasing costs: With the decrease in required reporting, department will have corresponding decrease in processing work.
(b) Reporting and paperwork requirements: Present load will be decreased.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation will greatly simplify compliance for affected entities.

Tiering:
Was tiering applied? Yes.

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

815 KAR 7:013. Kentucky building code plan review fees.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.050(5), 198B.060(10)
NECESSITY AND FUNCTION: KRS 198B.050(5) authorizes the Board of Housing, Buildings and Construction to issue regulations which are necessary to implement the Kentucky Building Code, and KRS 198B.060(10) authorizes the department to create a schedule of fees to fully cover the cost of the services performed under the code. The fees set forth herein are identical to the fee schedule used by the department since December of 1982.

Section 1. Submission of Plans and Fees. (1) All plans and specifications required to be submitted to the department under the Kentucky Building Code shall be accompanied by the applicable fee as set forth in this regulation, rounded to the nearest dollar.

(2) All fees required herein shall be in check form payable to the Kentucky State Treasurer.

(3) No approval for construction shall be issued by the department until all required fees have been paid.

(4) The plan review fees required by this regulation are intended to cover the cost of corresponding inspections for compliance with such plans.

Section 2. New Construction. (1) Departmental plan review fees for new buildings shall be calculated by multiplying the total square footage times the cost per square foot of each occupancy type as listed in the following table. Total square footage will be determined by the outside dimensions of the building. Minimum fee for review of plans under this section will be fifty (50) dollars.

Occupancy Type	Cost per Square Foot
Residential (excluding single family dwellings and duplexes)	2 cents
Assembly Occupancies	
Nightclub/restaurants	3.5 cents
All other assembly	3 cents
Educational	2 cents
Day care centers	2 cents
Business	2 cents
Mercantile	2 cents
Industrial factories	2 cents
Warehouses	1.5 cents
Institutional	2.5 cents
Frozen food plants	2 cents
High hazard	3 cents
All other non-residential	2 cents

(2) Plan review fees for additions to existing buildings, which do not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with subsection (1) of this section by the measurement of the square footage of the addition, only, as determined by the outside dimensions of the addition. Minimum fee for review of plans under this section will be fifty (50) dollars.

(3) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with subsection (1) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. Minimum fee for review of plans under this section will be fifty (50) dollars.

(4) Plan review fees for alternations and repairs not otherwise covered by this section shall be calculated by multiplying the cost for the repairs by .001.

Section 3. Specialized Fees. In addition to the fees required by Section 2 of this regulation, the following fees must be paid for the specialized plan reviews listed:

(1) Sprinkler fees:

Automatic Sprinkler Review Fee Table

Sprinkler Heads	Plan Review Fee
4-200	$50
201-300	60
301-400	80
401-750	100
over 750	$100 plus 10 cents per sprinkler over 750

(2) Fire detection system review fee: ten (10) dollars per 5,000 square feet up to 70,000 square feet; over 70,000 square feet - $140 plus fifteen (15) dollars per each additional 20,000 square feet.

(3) Standpipe plan review fee: thirty (30) dollars (Combination standpipe and riser plans will be reviewed under automatic sprinkler review fee schedule.)

(4) Carbon dioxide suppression system review fee: 1 to 200 pounds of agent - fifty (50) dollars; over 200 pounds of agent - fifty (50) dollars plus two (2) cents per pound in excess of 200 pounds.

(5) Halon suppression system review fee: Up to thirty-five (35) pounds of agent - fifty (50) dollars; over thirty-five (35) pounds - fifty (50) dollars plus five (5) cents per pound in excess of thirty-five (35) pounds.

(6) Foam suppression system review fee: one (1) dollar per gallon of foam concentrate. The fee for review of plans under this section shall not be less than fifty (50) dollars or more than $1,000.

(7) Commercial range hood review fee: twenty (20) dollars per hood.

(8) Dry chemical systems review fee (except range hoods): 1 to 30 pounds of agent - thirty (30) dollars; over thirty (30) pounds of agent - thirty (30) dollars plus twenty (20) cents per pound in excess of thirty (30) pounds.

(9) Flammable liquid or pressure tank fee: twenty-five (25) dollars for the first tank and five (5) dollars for each additional tank.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: September 23, 1985
FILED WITH LRC: September 23, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulaton will be held on November 25, 1985 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 20, 1985, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? Yes

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 7-8, 1985 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 7, 1985 at 2 p.m. and on Tuesday, October 8, 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 Representative Bruce, seconded by Senator Quinlan, the minutes of the September 9-10, 1985 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senators Pat McCuiston and Bill Quinlan; Representatives James Bruce and Joe Meyer.

Guests: Commissioner Don McCormick and Deputy Commissioner Tom Young, Department of Fish and Wildlife Resources; Linda G. Cooper, Corrections Cabinet; Sandra G. Pullen, George M. Catlett, Patricia Foley, Bruce Siria, and James Ramsey, Transportation Cabinet; Gary Bale, Delmus Murrell, and Ricki Cook, Department of Education; Darlene Goordrich, Ked Fitzpatrick, Marge Brock, Barbara Pospisil, Ladys Holdbrook, Ken Jackson, Paul Gibson, Angie Scott, Margeret Hockensmith, Barbara Coleman, Mark Yancey, Cliff Howard, and Dee Swain, Cabinet for Human Resources; William Doyle, Department of Financial Institutions; Etta Ruth Kepp, Office for Policy and Management; Cattie Lou Miller, Finance and Administration Cabinet; Martha Robinson, Council on Higher Education; J. J. Schroering, Ford Motor Company; Gerald L. Sample, CF Arrowhead - Tyme-It Transportation; Teresa Champion, Ky. Association of Health Care Facilities; Mike Miller.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, June Mabry, and Donna Valencia.

Press: Ken Marshall, WKYT-TV; Susan Warren, UPI.

The Subcommittee had no objections to the following regulations, but makes the following recommendations or statements:

Cabinet for Human Resources: Department for Aging Services
905 KAR 8:090 (Personal care assistance services.) This regulation was technically amended to replace in Section 2 the words "including but not limited to" with the words "or need an". Representative Meyer questioned whether or not the requirement that a person must have the ability to select and manage an attendant would exclude from this program many of the people for whom it should provide assistance, for example the mentally retarded. It was pointed out that KRS 205.905(2) does require that a person have the ability to select and manage. The subcommittee moved that this subject matter be referred to the Interim Joint Committee on Health and Welfare to determine: (1) whether or not KRS 205.905(2) does not, in effect, exclude from this program many of the people for whom it was intended to provide assistance, e.g. mentally retarded; and (2) if an amendment should be made to the statute to permit a responsible person to select and manage the provider of services for those who do not have the ability to select or manage the provider.

Transportation Cabinet: Department of Vehicle Regulation: Motor Carriers
601 KAR 1:020 (Permit for hauling industrial materials; fee; bond.) The subcommittee referred this regulation to the Interim Joint Committee on Transportation to study conflicts in KRS Chapter 189 and to propose legislation to correct any conflicts.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Tourism Cabinet: Department of Fish and Wildlife Resources: Game
301 KAR 2:044 (Taking of migratory wildlife.)

Corrections Cabinet: Office of Secretary
501 KAR 6:010 (Corrections policies and procedures.)

Transportation Cabinet: Department of Highways: Maintenance
603 KAR 3:030 (Primary road system classifications.)

Education and Humanities Cabinet: Department of Education: Office of Instruction:Student Services
704 KAR 7:020 (Counselor; criteria and duties.)
Office of Vocational Education: Instructional Programs
705 KAR 4:210 (Diploma requirements for postsecondary students.) Representative Meyer questioned the impact of this regulation on students with special needs such as retarded students. The Department stated that they would receive certificates for completion and would not be disqualified from the program.

Office of Vocational Rehabilitation: Administration
706 KAR 1:010 (Three-year plan for vocational rehabilitation services.)
Office of Education for Exceptional Children: Exceptional and Handicapped Programs
707 KAR 1:051 (Exceptional children's programs.)

Public Protection and Regulation Cabinet: Department of Financial Institutions: Securities
808 KAR 10:210 (Registration exemptions - Federal Regulation D.)

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.)
Department for Employment Services: Unemployment Insurance
903 KAR 5:260 (Unemployment insurance procedures.)
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904 KAR 1:012 (Inpatient hospital services.)
904 KAR 1:013 (Payments for acute care and mental hospital inpatient services.)
904 KAR 1:015 (Payments for hospital outpatient services.)
904 KAR 1:045 (Payments for mental health center services.)
904 KAR 1:300 (Withholding the federal share of payments to recover Medicare or Medicaid overpayments.)
904 KAR 1:310 (Repeal of 904 KAR 1:018.)
Department for Social Services: Block Grants
905 KAR 3:040 (Allocation formula.)
Children's Residential Services
905 KAR 7:080 (Children's treatment services facility manual.)
905 KAR 7:110 (Northern Kentucky Treatment Center policy and procedures manual.)
905 KAR 7:170 (Cardinal Treatment Center policy and procedural manual.)
905 KAR 7:200 (Re-Ed Treatment policy/procedural manuals.)
905 KAR 7:210 (Central Kentucky Re-Ed Center policy and procedural manual.)

The following regulation was deferred at the agency's request:

Public Protection and Regulation Cabinet: Harness Racing Commission: Quarter Horse, Appaloosa, and Arabian Commission
812 KAR 1:050 (Jockeys.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 10:30 a.m. until November 11, 1985.

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