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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 February 3 and 4, 1986. For information, call 502-564-8100, ext. 312.

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

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PUBLIC HEARINGS

The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication of the administrative regulation. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

This information shall be published in the "Administrative Register" at the same time as the initial publication of the administrative regulation. Any person interested in attending the hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

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

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

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

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY

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 Department of Personnel in accordance with KRS Chapter 18A, the Department of Personnel 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

DEPARTMENT OF PERSONNEL

101 KAR 1:120E. Separations and disciplinary actions.

RELATES TO: KRS 18A.005, 18A.075, 18A.095, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.075, 18A.110
EFFECTIVE: January 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.030 requires the Commissioner of Personnel to prepare and recommend to the board rules which provide for layoffs and for separation of employees deemed unsatisfactory or excessive by agency or department heads. KRS 18A.110 requires the commissioner to prepare and submit to the board rules which provide for layoffs, imposition of fines of not more than ten (10) days' pay, suspension without pay for not longer than thirty (30) days, and for discharge or reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these rules, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties. At the time that an employee is given written notice of layoff, dismissal, suspension and disciplinary fine, an informational copy shall be transmitted to the Personnel Board.

Section 2. Layoffs. (1) An appointing authority may layoff an employee in the classified service whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. An employee with status may appeal his layoff in accordance with 101 KAR 1:130. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff and of his right to appeal. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee under the merit system regulations, unless circumstances prevent such an interview; such circumstances must be detailed in writing to the commissioner.
(2) Seniority, performance, appraisals,

conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the commissioner. No status employee is to be separated by layoff while there are seasonal, federally funded time limited, provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality. "Probationary" as used in this subsection does not include employees serving a probationary period as a result of a promotion.

(3) The appointing authority and the department shall attempt to place the employee in another position for which the employee is qualified prior to the effective date of layoff.

Section 3. Dismissals. (1) The appointing authority may remove any employee with status only for cause after furnishing the employee and the commissioner with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Notifications of dismissal that do not properly specify the reasons shall be considered invalid and the employee shall remain on the payroll until such time as proper charges are effected.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing, or upon request, to appear personally with counsel and reply to the appointing authority or his deputy.

(3) Prior to the effective date of dismissal of an employee with status the employee shall be afforded the opportunity to appear personally with or without counsel and respond to the reasons for the proposed dismissal to the appointing authority or his deputy and show cause why the action should be modified or set aside. In those cases where an agency has a pretermination hearing process, approved by the Commissioner of Personnel, the convening of such pretermination hearing or the appointing authority's providing, in writing, the opportunity for an employee to request a pretermination hearing shall be considered as meeting the requirements of this section.

(4) [(3)] An employee with status may appeal his dismissal as set forth in 101 KAR 1:130.

(5) [(4)] A dismissed employee may be required to forfeit all accrued leave.

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

Section 4. Separation During Probationary Period. An employee may be separated without the right of appeal at any time during the probationary period as set forth in 101 KAR 1:100, Section 3.

Section 5. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 7. Suspensions. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days for each occurrence. An employee with status may appeal his suspension as set forth in 101 KAR 1:130.

Section 8. Disciplinary Fines. An appointing authority may impose as a disciplinary measure a fine of not more than ten (10) days pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days pay for each occurrence. The employee shall be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the commissioner. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action in accordance with the provisions of 101 KAR 1:130. For purposes of 101 KAR 1:130, the effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 9. Written Reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 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 Department of Personnel in accordance with KRS Chapter 18A, the Department of Personnel 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

DEPARTMENT OF PERSONNEL

101 KAR 1:145E. Employee evaluation plan; classified.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: January 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires personnel rules for classified service employees to provide for uniform standards and methods of appraising work performance of all employees, and for the use of such methods of appraisal in personnel actions, and for the development and operation of programs to improve the work effectiveness of employees. This regulation implements such duties by establishing a uniform employee evaluation system.

Section 1. Eligible Employees. Each full-time employee who has completed his probationary period of service; each part-time employee who works over 100 hours each month who has completed his probationary period of service; each federally funded, time limited (FFTL) employee who has completed six (6) months service; and each employee on probation as a result of promotion shall have his work performance evaluated on an annual basis, according to criteria developed by the Employee Evaluation Committee.

Section 2. Work Performance Evaluation. (1) Each evaluator, the first line supervisor, shall assess employee performance in five (5) areas: job knowledge and skills; quality of work; productivity; work progress; and level of responsibility and interpersonal skills.

(2) Each area shall be assessed as exceeding performance requirements, meeting performance requirements or as being below performance requirements.

(3) The overall rating shall be determined by the ratings on each of the five (5) job factors:

(a) "Exceeds requirements." The employee shall receive an "exceeds requirements" rating when his job performance exceeds requirements on three (3) or more of the job factors, and he receives no "below requirements" ratings on any of the job factors.

(b) "Below requirements." The employee shall receive a "below requirements" rating when his job performance is below requirements on three (3) or more of the job factors. The evaluator shall provide the employee with suggestions for improvement and training, as needed.

(c) "Meets requirements." The employee who receives any other combination of ratings on the job factors shall receive an overall rating of "meets requirements."

Section 3. Annual Evaluation. (1) Evaluation shall take place annually. At the beginning of the evaluation period, the evaluator shall identify and review the job duties and factors to be evaluated with the employee and record the job description on the re-evaluation form. After six (6) months, the evaluator shall assess the employee's job performance, discuss the findings with the employee, and initiate corrective measures, as needed. After twelve (12) months, the evaluator shall assess the employee's job performance, and discuss the overall rating with the employee.

(2) The evaluator of each employee shall be the first line supervisor, providing that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period, he shall evaluate all employees under his supervision prior to leaving. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period under negative circumstances, the next line supervisor shall evaluate the employees of the supervisor who has left. If an employee transfers to a new job within ninety (90) days prior to the end of the evaluation period, he shall be evaluated by his prior supervisor.

(3) All employees shall be evaluated during the same time period. All ratings shall be completed and the results submitted to the Department of Personnel by February 1 of each year. Evaluators shall schedule evaluation conferences to allow twenty-five (25) working days for reconsideration, as needed.

Section 4. Request for Reconsideration. (1) Any employee may request reconsideration of his evaluation. In response to an employee's request, a reconsideration meeting of the employee and the evaluator shall be held and shall be scheduled no sooner than two (2) working days and no later than five (5) working days after the evaluation was first presented to the employee.

(2) If the employee does not agree with the rating following the reconsideration meeting, he may request further review of the evaluation by submitting a written request to the second line supervisor within five (5) working days following the reconsideration meeting.

(3) The reviewer, the second line supervisor, shall obtain a written statement from the evaluator and employee, or meet individually with the evaluator and with the employee to discuss the rating. Within fifteen (15) working days from receipt of the request for review, the reviewer shall inform the employee and the evaluator in writing of his determination.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 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 Department of Personnel in accordance with KRS Chapter 18A, the Department of Personnel 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

DEPARTMENT OF PERSONNEL

101 KAR 1:205E. Employee evaluation plan; unclassified.

RELATES TO: KRS 18A.030, 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
EFFECTIVE: January 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service in positions enumerated in KRS 18A.115(1)(f), (g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these rules shall be approved by the Governor and promulgated according to KRS Chapters 12 and 13A; nothing herein shall be construed to preclude optional use of rules promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time salaried basis.

Section 1. Eligible Employees. Each permanent full-time employee after six (6) months of service; each part-time employee who works over 100 hours each month after six (6) months of service; each federally funded, time limited (FFTL) employee who has completed six (6) months service shall have his work performance evaluated on an annual basis, according to criteria developed by the Employee Evaluation Committee.

Section 2. Work Performance Evaluation. (1) Each evaluator, the first line supervisor, shall assess employee performance in five (5) areas: job knowledge and skills; quality of work; productivity; work progress; and level of responsibility and interpersonal skills.

(2) Each area shall be assessed as exceeding performance requirements, meeting performance requirements or as being below performance requirements.

(3) The overall rating shall be determined by the ratings on each of the five (5) job factors:

(a) "Exceeds requirements." The employee shall receive an "exceeds requirements" rating when his job performance exceeds requirements on three (3) or more of the job factors, and he receives no "below requirements" ratings on any of the job factors.

(b) "Below requirements." The employee shall receive a "below requirements" rating when his job performance is below requirements on three (3) or more of the job factors. The evaluator shall provide the employee with suggestions for improvement and training, as needed.

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Section 3. Annual Evaluation. (1) Evaluation shall take place annually. At the beginning of the evaluation period, the evaluator shall identify and review the job duties and factors to be evaluated with the employee and record the job description on the re-evaluation form. After six (6) months, the evaluator shall assess the employee's job performance, discuss the findings with the employee, and initiate corrective measures, as needed. After twelve (12) months, the evaluator shall assess the employee's job performance, and discuss the overall rating with the employee.

(2) The evaluator of each employee shall be the first line supervisor, providing that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period, he shall evaluate all employees under his supervision prior to leaving. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period under negative circumstances, the next line supervisor shall evaluate the employees of the supervisor who has left. If an employee transfers to a new job within ninety (90) days prior to the end of the evaluation period, he shall be evaluated by his prior supervisor.

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(3) The reviewer, the second line supervisor, shall obtain a written statement from the evaluator and employee, or meet individually with the evaluator and with the employee to discuss the rating. Within fifteen (15) working days from receipt of the request for review, the reviewer shall inform the employee and the evaluator in writing of his determination.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at noon.

STATEMENT OF EMERGENCY

The 1986 thoroughbred breeding season is approaching and ordinary administrative regulations will not be effective soon enough to protect the industry. It is imperative that this emergency regulation be adopted to protect the industry. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
DAVID E. BOSWELL, Commissioner

KENTUCKY DEPARTMENT OF AGRICULTURE

302 KAR 20:180E. Restrictions equine viral arteritis.

RELATES TO: KRS 257.020, 257.030
PURSUANT TO: KRS 257.030
EFFECTIVE: January 13, 1986
NECESSITY AND FUNCTION: To protect the thoroughbred industry from the spread of Equine Viral Arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.

Section 1. Definitions. As used in this regulation unless the context clearly requires otherwise:
(1) "EVA" means Equine Viral Arteritis a communicable disease in livestock;
(2) "Vaccinated" or "Vaccination" means equine vaccinated with EVA [equine] modified live virus vaccine and the vaccination status kept current in accordance with manufacturers recommendations;
(3) "Sero Positive" horse means the horse has reacted positive to a blood test for EVA;
(4) "Sero Negative" horse means the horse has reacted negatively to a blood test for EVA;
(5) "Book or Booking" means the contracting of mares to breed to stallions and/or the scheduling of mares to breed to stallions;
(6) "Chief Livestock Sanitary Official" means the State Veterinarian of the Commonwealth of Kentucky;
(7) "Cover" means the act of breeding a stallion to a mare;
(8) "Shedder or Shedding" means equine that has the EVA organism in the body that is capable of being transmitted to other animals; and
(9) "Identified or Identification" of equine means identification by breed, color, age, sex, tattoo and markings.

Section 2. Sero Positive Stallions. Sero positive stallions shall be handled in the following manner:
(1) All thoroughbred stallions known to be shedding EVA shall not be permitted to breed until the Chief Livestock Sanitary Official determines that the stallion does not pose a threat of EVA spread. In determining whether a shedder poses a threat of disease spread the Chief Livestock Sanitary Official shall consider whether the farm where the shedder is located can comply in all respects with the restrictions for breeding shedders found in subsection (1)(b) of this section.
(a) Shedding stallions shall be housed and handled in a facility apart from nonshedding stallions;
(b) When the Chief Livestock Sanitary Official determines that a shedding stallion can breed the following control measures shall apply:
1. Owners and/or agents of mares booking or seeking to book to known shedding stallions shall be notified in writing by the owner and/or agent of the stallion as to the classification of the stallion as a shedder at the time of booking and copy of written notification sent to the Chief Livestock Sanitary Official;
2. Shedding stallions shall be housed, handled and bred in a facility isolated from nonshedding stallions;
3. Shedding stallions shall be bred only to mares that have been vaccinated against EVA at least twenty-one (21) days prior to breeding or to mares that are sero positive from prior vaccination or exposure;
4. All mares bred to shedding stallions shall be returned to the farm of origin and isolated from all other equine for a period of forty-two (42) days [the remainder of the breeding season] or shall be returned only to a premise where all animals on that premise are vaccinated a minimum of twenty-one (21) days prior to association with these mares where the mares shall remain on the isolation premise for a period of forty-two (42) days. Following the forty-two (42) day isolation period said mares shall return to the farm of origin where they shall be isolated for twenty-one (21) days. All mares bred to shedding stallions shall remain in Kentucky for the period of isolation; [and]
5. Mares bred to shedding stallions shall be returned to the farm of origin in a separate van or other mode of transportation. Upon returning to the farm of origin the van or other mode of transportation used to transport said mare shall be immediately cleaned and disinfected;
6. Mares that do not conceive after being bred to shedding stallions shall be bred to shedding stallions only.
(2) Sero positive stallions disclosed in 1985 or 1986 that were not tested sero negative prior to vaccination and those stallions known to have been associated with the transmission of EVA shall be handled as follows:
(a) It shall be the responsibility of the Chief Livestock Sanitary Official in cooperation with the stallion owner/manager to determine that such a stallion is not shedding EVA virus prior to the stallion being permitted to breed other than to test mares;
(b) The procedure for determining that a stallion is not a shedder is as follows:
1. Re-bleed the stallion and if confirmed as sero positive, breed the stallion a minimum of two (2) times a day for two (2) to four (4) days to each of two (2) sero negative test mares. These test mares shall be isolated from all other equine and blood tested on day fourteen (14) and twenty-eight (28) following the last cover.
2. If neither of the test mares shows symptoms of EVA and if each test mare remains sero negative following the twenty-eight (28) day test, the stallion shall be considered a nonshedder and allowed to breed.
a. The first two (2) mares bred to these stallions following the test mares [All mares bred to these stallions] must have a prebreeding blood test for EVA; and
b. The two (2) mares enumerated in item a of this subparagraph [Any sero negative mare subsequently bred to this stallion] shall be blood tested at [seven (7),] fourteen (14) and twenty-eight (28) days post breeding.

3. If any test mare shows symptoms of the disease and/or if any mare sero converts the stallion shall be considered a shedder and shall be handled in accordance with subsection (1) of this section.

(c) Owners and/or agents of mares booking or seeking to book to sero positive stallions classified under subsection (2) of this section shall be notified in writing by the owner and/or agent of the stallion as to the classification of the stallion at the time of booking and a copy of the written notification sent to the Chief Livestock Sanitary Official;

(3) Sero positive, vaccinated stallions never associated with the transmission of EVA must have been sero negative prior to vaccination and a statement presented by the owner and/or agent of the stallion and his veterinarian that the stallion had no known contact with EVA infected and/or exposed equine prior to vaccination nor during the twenty-one (21) days post vaccination.

Section 3. Stallions becoming infected during the breeding season shall immediately cease breeding and the Chief Livestock Sanitary Official immediately notified. All owners and/or agents having mares booked to that stallion or previously bred to that stallion shall be immediately notified in writing by the owner and/or agent of the stallion and a copy of written notification set to the Chief Livestock Sanitary Official. The infected stallion shall be classified as a shedder and shall be handled accordingly. The stallion may be subsequently determined by the Chief Livestock Sanitary Official to be a nonshedder by test breeding in accordance with Section 2(2)(b) of this regulation.

Section 4. Equine Vaccinated Against EVA. Equine vaccinated <u>for the first time</u> against EVA must have blood drawn for EVA testing prior to vaccination. [Vaccinations must be approved by the Chief Livestock Sanitary Official prior to vaccination and] must be reported to the Chief Livestock Sanitary Official within seven (7) days of the vaccination. Stallions vaccinated shall not be exposed to infected animals nor used for breeding for twenty-eight (28) days following vaccination. All equine vaccinated against EVA shall be properly identified.

Section 5. Mares that were Clinically Ill. Mares that were clinically ill with EVA or mares that were bred to shedding stallions in 1984 or any mare suspected of having EVA shall be blood tested. [In 1985 this shall include but be limited to all mares bred after April 15, 1984 at Airdrie Stud Breeding Shed #2, Domino Stud after May 24, 1984 and Warnerton Farm after May 7, 1984.] If found to be sero positive without proof of being sero negative prior to being vaccinated they shall be handled as follows:

(1) They shall only be bred to sero positive or vaccinated stallions;

(2) They shall be hauled in a separate van or other mode of transportation and shall be isolated from susceptible animals at the farm where breeding is to take place;

(3) These mares shall be bred last on any given day during the breeding season and the breeding shed shall be cleaned and disinfected after breeding;

(4) The van or other mode of transportation hauling such mare shall be cleaned and disinfected immediately upon returning to the farm of origin; and

(5) Mares in foal from <u>1985</u> [1984] breeding shall be isolated one month prior to foaling and they shall remain in isolation until released by the Chief Livestock Sanitary Official. At foaling, or following abortion, appropriate samples should be taken from the mare and foal to evaluate the possibility of their shedding EVA virus.

Section 6. The Chief Livestock Sanitary Official may take such steps in addition to those outlined in this regulation as are reasonably necessary for the prevention and control of EVA in the equine population which shall include but not be limited to the isolation of all thoroughbreds and equine associated with them, thought to present the potential for EVA spread in the Commonwealth of Kentucky.

Section 7. All thoroughbred stallions <u>not receiving boosters, nonvaccinated stallions</u> and teasers shall be blood tested for EVA prior to the <u>1986</u> [1985] breeding season.

Section 8. Nurse mares shall be sero negative and/or properly vaccinated in accordance with Section 4 of this regulation and/or isolated on the thoroughbred farm.

Section 9. All newly acquired teasers shall be sero negative and/or properly vaccinated in accordance with Section 4 of this regulation.

Section 10. If any test mare after test breeding shows symptoms of the disease and/or if any mare sero converts the <u>positive</u> [test] mare shall be isolated from all other equine for the remainder of the breeding season.

<u>Section 11. All nonvaccinated stallions shall be blood tested for EVA every fourteen (14) days during the breeding season. Nonvaccinated mares bred to nonvaccinated stallions shall be negative to a pre-breeding EVA blood test not less than thirty (30) days before breeding and shall be blood tested on day fourteen (14) and twenty-eight (28) after breeding. All vaccinated stallions that have not been revaccinated in acordance with manufacturers recommendations shall be considered nonvaccinated stallions for purposes of these regulations and shall be required to comply with Section 2(2) of this regulation to determine that the stallion is not a shedder.</u>

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: December 19, 1985
FILED WITH LRC: January 13, 1986 at 3 p.m.

STATEMENT OF EMERGENCY

The majority of school districts granted exemptions from maximum class sizes under KRS 157.360(2)(b) higher aides to assure quality education, but 702 KAR 3:190 currently requires such only when the class size reaches 36 students. The State Board of Education now feels it is vital that all oversized classes have the services of an aide and wishes to make such a requirement for the remaining bulk of the class size exemptions to be granted in January and

February of this year. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
ALICE McDONALD, Superintendent

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 3:190E. Maximum class sizes.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 156.070, 157.360
EFFECTIVE: January 10, 1986
NECESSITY AND FUNCTION: KRS 157.360(2)(b) prescribes that the Superintendent of Public Instruction shall enforce maximum class sizes for every academic course requirement of the State Board of Education in kindergarten and grades one (1) through six (6), except in vocal and instrumental music, art, physical education, and special education classes and shall establish procedures for exemptions to the above. This regulation implements such functions.

Section 1. The maximum number of pupils enrolled in each academic class in grades kindergarten, one (1), two (2), and three (3) shall not exceed twenty-nine (29), except classes in vocal and instrumental music, art, and physical education. The maximum number of pupils enrolled in each academic class in grades four (4), five (5), and six (6) shall not exceed thirty-one (31), except classes in vocal and instrumental music, art, and physical education.

Section 2. (1) A superintendent of a local school district may request approval from the State Board of Education for a one (1) year exemption of no more classes than enroll twenty (20) percent of the pupils in kindergarten and grades one (1) through six (6) in each school within the district, when unusual circumstances are believed to warrant an increased class size for a specific class or classes.

(2) The request for exemption shall be filed with the Professional Staff Data forms and shall be forwarded to the Office of Local Services, Division of School Management and Audit, not later than October 1.

(3) The request for exemption shall contain detailed, specific reasons and circumstances causing the increased class size for each class for which an exemption is requested.

(4) The request for exemption shall contain an educational plan assuring that all affected students will receive a quality education.

(5) The request for exemption shall include a specific plan for reducing the class size prior to the beginning of the next school year.

(6) No exemption will be granted in the same grade in the same school for more than one (1) year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption is not approvable. [Enrollment in a class for which an exemption has been approved shall not exceed thirty-five (35) students unless another teacher or an aide is provided.]

(7) Since the district, as a condition for approval of an exemption, must provide a plan to alleviate the overcrowding problem, no school which has an exemption in a grade will be granted an exemption in the next grade for the following year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption is not approvable.

(8) The services of an aide shall be provided for all classes for which exemptions are granted.

(9) No class granted an exemption in grades K-6 shall enroll more than thirty-five (35) students.

Section 3. The Office of Local Services shall enforce this regulation through examination of the enrollments recorded on each Professional Staff Data form and shall certify compliance or deny Foundation Program units to a school district in non-compliance with this regulation.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 10, 1985 at 11 a.m.

STATEMENT OF EMERGENCY

The majority of school districts granted exemptions from maximum class sizes under KRS 157.360(2)(b) higher aides to assure quality education, but 702 KAR 3:190 currently requires such only when the class size reaches 36 students. The State Board of Education now feels it is vital that all oversized classes have the services of an aide and wishes to make such a requirement for the remaining bulk of the class size exemptions to be granted in January and February of this year. This emergency regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
ALICE McDONALD, Superintendent

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 10:022E. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 156.070, 156.160
EFFECTIVE: January 13, 1986
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt rules and regulations relating to grading, classifying, and accrediting all common schools, and further allows private, parochial, and church schools to voluntarily comply with accreditation standards and to be so certified by the state board. This regulation implements this duty by prescribing general standards to be used in evaluation of public elementary, middle and secondary schools, and of those non-public schools voluntarily seeking an accreditation evaluation.

Section 1. (1) Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.070 and 156.160, the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools, as amended on December 11, [September 10,] 1985, are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

(2) "Procedures for Kentucky Accreditation Program," April, 1985, as revised on September

10, 1985, is presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section 2. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.160(2), non-public schools which voluntarily request accreditation shall be in compliance with all standards and indicators included in the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools except those marked "N/A" (not applicable). These Voluntary Non-Public School Accreditation Standards, May, 1985, are presented herewith for filing with the Legislative Research Commission and incorporated herein by reference.

Section 3. The procedures for the voluntary accreditation of individual non-public schools or related groups of such schools under common management and control shall be as follows:

(1) All non-public schools or groups of schools which voluntarily request accreditation shall notify the Division of Accreditation by letter of their intentions.

(2) An Instructional Services Advisor (I.S.A.) shall be assigned to a school and shall be the liaison between the school and the Department of Education. The I.S.A. shall provide the school with the department's self-study guide and provide technical assistance as needed.

(3) An on-site team will visit each school to validate the school's self-study. This team shall be appointed by the Department of Education and shall consist of at least three (3) persons - an I.S.A., a local non-public school official and another Department of Education staff member.

(4) An additional team member shall be appointed for each additional five (5) faculty members beyond fifteen (15).

(5) A report shall be generated by the on-site team and a copy presented to the school or related group of schools. The school or related group of schools shall prepare a three (3) year plan of action to correct all non-compliance. The plan shall be monitored annually to assure that the plan of action is being implemented.

(6) The school or related group of schools shall then be placed on a five (5) year accreditation cycle. The first year shall be the self-study and the on-site visit followed by a three (3) year plan of action, and the last year shall be devoted to updating the self-study.

(7) State funds may not be used for the accreditation of non-public schools. Such schools shall reimburse the Department of Education the total costs of accreditation certification, including necessary follow-up, either from their own funds or from any appropriate federal grants.

Section 4. "The Merit Rating Procedural Information and General Criteria for Guidance Programs," March, 1985, and "Merit Rating Guidelines for Kentucky Schools," as adopted on July 9, 1984, are presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section 5. A copy of all documents incorporated in this regulation may be obtained from the Office of Instruction, Department of Education.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 13, 1986 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 334.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:030E. Merit system for local health departments.

RELATES TO: KRS 211.170, 212.170, 212.870
PURSUANT TO: KRS 194.050, 211.090
EFFECTIVE: December 17, 1985
NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 require the Cabinet for Human Resources to supervise the personnel functions and prescribe merit system standards for local health departments. In addition, 5 CFR, Part 900, Intergovernmental Act Programs contains requirements for establishing and maintaining a system of personnel administration on a merit basis as a condition precedent to the receipt of federal funds for the conduct of certain federally funded health programs. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the merit system council for local health departments in accordance with applicable federal and state laws and regulations.

Section 1. Definitions. As used in this regulation:

(1) "Council" means the merit system council for local health departments created by this regulation; and

(2) "Local health department" means a county, city-county, or district health department created pursuant to KRS Chapter 212 but does not include health departments located in cities of the first class or urban-county health departments.

Section 2. Council Membership, Terms, and Meetings. (1) A merit system council is hereby created to serve local health departments. The

council shall be composed of five (5) members who shall be appointed by the Secretary for Human Resources upon the recommendation of the Commissioner of the Department for Health Services. The members shall be public-spirited persons of recognized experience in the improvement of public administration, and in the impartial selection of efficient governmental personnel. No member of the council shall be an employee of a local health department or of the Department for Health Services.

(2) Members of the council shall serve for a term of three (3) years or until successors have been appointed, except that for members first appointed two (2) members shall be appointed for one (1) year, one (1) member for two (2) years, and two (2) members for three (3) years. A member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of such term.

(3) The council shall elect a chairman from its membership. Regular meetings of the council shall be held at least semi-annually. Special meetings of the council may be held upon call of the chairman or the Commissioner of the Department for Health Services.

(4) The council shall be attached to the Department for Health Services for administrative and budgetary purposes.

(5) A simple majority of the members of the council shall constitute a quorum for the purpose of conducting official business. The council shall adopt procedures for the conduct of its activities.

Section 3. Merit System Rules and Regulations. The Cabinet for Human Resources hereby adopts the publication entitled "Rules and Regulations for the Local Health Departments of Kentucky" as amended to November 20, 1985 [September 15, 1984], by reference, as the merit system requirements for local health departments in Kentucky governing all phases of personnel management, including but not limited to appointments, promotions, examinations, separations, and disciplinary actions.

Section 4. Summary of Amendment. In relation to Section 3 of this regulation strike the cover page of the Merit System Rules and Regulations for local health departments of Kentucky dated September 15, 1984, and substitute in lieu thereof a new cover page dated November 20, 1985.

(1) Strike pages 25 and 26 undated and substitute in lieu thereof new pages 25 and 26 dated 11-20-85 which:

(a) Deletes allowance for twenty-four (24) hour dismissal of status employee and instead allows for suspension with pay until termination;

(b) Creates a new section which requires a pretermination hearing prior to dismissal of a status employee; and

(c) Requires that a status employee be given an opportunity to respond to charges prior to suspension.

(2) Strike page 27 undated and substitute in lieu thereof a new page 27 dated 11-20-85 which makes decisions of the Merit System Council binding upon the employee and the appointing authority.

(3) Strike page 31 undated and substitute in lieu thereof a new page 31 dated 11-20-85 which allows local health department employees to earn up to 200 hours of compensatory leave and requires a lump sum payment for compensatory hours upon termination of employment. [May 1, 1984, and substitute in lieu thereof new cover page dated September 15, 1984. Strike page 9 undated and substitute in lieu thereof new page 9 dated 9-15-84 which permits county health departments, as well as district health departments, to use all available compensation plans.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 9, 1985
FILED WITH LRC: December 17, 1985 at 10 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 Health Services

902 KAR 10:081E. Construction standards for components of onsite sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
EFFECTIVE: December 23, 1985
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of onsite sewage disposal systems except for systems with a surface discharge. The purpose of this regulation is to establish minimum component standards including design, construction, and materials specifications for onsite sewage disposal systems in Kentucky in order to protect the public health.

Section 1. Citation of Regulation. This regulation may be cited as the "Construction standards for components of onsite sewage disposal systems."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Aerobic treatment unit" means any sewage treatment unit which utilizes the principle of oxidation in the decomposition of sewage by the introduction of air into the sewage.

(2) "Approved" means that which has been considered acceptable to the cabinet.

(3) "Cabinet" means the Cabinet for Human Resources and its agents.

(4) "Effluent" means the liquid discharge of a septic tank or other sewage treatment unit.

(5) "Lateral field" means the area in which lateral lines are installed or can be used to

generally describe the soil absorption portion of the subsurface sewage treatment and disposal system.

(6) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and distribute the effluent for further treatment and absorption into the soil beneath the ground surface.

(7) "Low pressure pipe system" means an onsite sewage disposal system consisting of a septic tank(s) or aerobic treatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(8) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(9) "Onsite sewage treatment and disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground.

(10) "Secretary" means the Secretary for the Cabinet for Human Resources.

(11) "Septic tank" means a watertight sewage treatment unit designed and constructed to receive raw sewage, separate solids from liquid, an aerobically digest organic matter, store liquids through a period of detention, and allow the clarified effluent to discharge.

(12) "Septic tank system" means a subsurface sewage treatment and disposal system consisting of a septic tank(s), a gravity-fed lateral field, necessary pipe lines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.

Section 3. Approval Procedures. (1) All commercial manufacturers and suppliers of materials, components, and equipment designed or intended for use in the construction of onsite sewage disposal systems shall obtain approval of such materials, components, and equipment from the cabinet prior to their sale or use in Kentucky. Such approval shall be based upon conformance to recognized design, materials, construction, and performance standards of the National Sanitation Foundation (NSF), the American Society for Testing and Materials (ASTM), and the standards set forth in this regulation.

(2) Manufacturers, purveyors and suppliers of materials, components, and equipment shall submit the following information, as applicable, to the cabinet in review and consideration in the approval process:

(a) All applicable plans, specifications, process descriptions, and other relevant data.

(b) Supportive test data from independent laboratories, testing firms, NSF, ASTM, and other approved organizations.

(c) Other pertinent information as requested by the cabinet.

(3) New or experimental materials, components, or equipment shall be submitted for approval as outlined in subsection (2) of this section and the following additional requirements and restrictions shall apply:

(a) Those materials, components, or equipment which consist of modifications to existing approved products shall be considered for approval after demonstration, through independent teting of the modifications, that improved performance, service life, or ease of maintenance and operation results.

(b) Those materials, components, or equipment which involve new or experimental technologies relating to design, construction, or operational process shall be considered for approval on a probationary basis. During the probationary period, it shall be the responsibility of the person seeking approval of such product to contract with an independent testing firm to provide monitoring of the performance of the product in its intended usage. Such monitoring of the product shall include documentation of the site conditions where the product is installed, the waste load generated by the user and its constitution, and other parameters deemed necessary by the cabinet. In the event that the product fails to perform in an acceptable manner, it shall be the responsibility of the person seeking its approval to replace the product with another product which is approved by the cabinet for that particular use.

(c) Any materials, components, or equipment which, in the opinion of the cabinet, meet the requirements for approval after careful study and testing, as required, shall be considered to be approved for use in Kentucky for the specific purpose(s) intended. Such approval shall be made in writing to the person requesting same and shall set forth any conditions or restrictions for the use of the product when deemed necessary by the cabinet. Each product, so approved, shall be listed by the cabinet on an "approved listing of materials, components, and equipment," which shall be updated on a timely basis and distributed to local health departments and other interested parties on request.

Section 4. Septic Tank Standards. (1) Precast concrete.

(a) All precast concrete septic tanks shall be designed and constructed so as to provide sufficient rigidity and structural strength to prevent damage due to hydrostatic water pressure and support vertical uniform loading of 150 lb./sq. ft. on the top of the tank.

(b) A minimum and product strength of 4,000 pound per square inch shall be used in the construction of the tank.

(c) The top, bottom, ends and sides of the tank shall have a minimum thickness of two and one-half (2 1/2) inches.

(d) The tank shall be reinforced by using a minimum reinforcing of six (6) inch No. 10 gauge welded steel reinforcing wire lapped at least six (6) inches. Other reinforcing methods may be used provided that such other methods can be demonstrated to the satisfaction of the cabinet to be equal, or superior, to the method described herein.

(e) The tank shall be so designed and constructed that all joints, seams, or other openings shall be watertight in use. Asphalt compounds, neoprene gaskets, or other acceptable sealant materials shall be used to insure watertightness.

(f) At least two (2) manholes shall be provided to permit access for maintenance of the tank. Manholes shall have a minimum dimension of ten (10) inches and a maximum of twenty-four (24) inches measured on the bottom edge of the manhole opening into the tank. Manholes shall be located on each end of the tank over the inlet

and outlet structures (baffles or tees). The manhole openings shall be beveled so as to adequately seal and support the manhole cover. The manhole cover shall possess sufficient strength to support a uniform load of 150 lb./sq. ft. without damage to the cover or tank and provide a means for removal (handles, etc.).

(g) Cast-in-place baffles, at inlet and outlet ends of the tank have a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. For cast-in-place baffles reinforcing wire into and along the tank sidewalls a minimum of (6) inches for proper anchorage. For tanks using drop-in baffles, a molded in slot or groove with a minimum one (1) inch penetration into the tank sidewall shall be provided to retain the baffle. Such slot or groove shall be slightly tapered to produce a secured "wedge fit" baffle. For bolt-on tee-type baffle structures, stainless steel bolts, washers and nuts shall be used for anchorage. Such bolts shall be cast-in-place in the baffle or tank endwall and securely anchored by attachment to tank or baffle reinforcing material. On those tanks where baffle attachment bolts penetrate through the tank endwall suitable bushings or seals shall be used to render bolt holes watertight. Suitable sealants shall also be used on all baffle edges which contact the tank endwall to prevent shortcircuiting of tank contents.

(h) In lieu of baffles, sanitary tees or corrosion resistant materials (fiberglass, plastic, or cast iron) may be used as long as joints are properly sealed and the specified dimensions above and below the liquid level of the tank are maintained.

(i) Internal dimensions of the tank shall fall within plus or minus one (1) foot of the recognized proportional ratios of 2:1 to 3:1, the length being approximately two (2) to three (3) times the width. The minimum liquid depth shall be thirty-four (34) inches with maximum depth of fifty-four (54) inches depending upon tank capacity. The inlet and outlet pipe knockouts or holes shall be of sufficient diameter to accept a minimum four (4) inch diameter pipe and shall be so designed as to provide a minimum height difference of three (3) inches for the inlet pipe invert above the outlet pipe invert. Inlet and outlet holes shall be so located on the ends of the tank as to provide a minimum freeboard space of ten (10) inches to one (1) foot between the liquid level and the inside top surface of the tank for scum storage. Both inlet and outlet baffles or tees shall extend above the liquid level of the tank to within at least two (2) inches but not less than one (1) inch of the inside top surface of the tank to contain scum and provide venting space for gases. Baffle designs which extend to the inside top of the tank may be used provided that a slotted vent space of a minimum height of one (1) inch by four (4) inches in width is located at the juncture of the baffle and tank top in the center of the baffle. The inlet tee or baffle shall extend below the liquid level between eight (8) to ten (10) inches, and the outlet baffle or tee shall extend downward to thirty-five (35) to forty (40) percent of the total liquid depth of the tank. When baffles are used, the distance between the outlet baffle and tank endwall shall be between four (4) to six (6) inches, and the distance between the inlet baffle and endwall shall be between six (6) to ten (10) inches.

(j) All tanks offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name, the serial number assigned to the manufacturer's plans and specifications approved by the cabinet, and the liquid or working capacity of the tank. This imprint, stencil, or other marking shall be located to the right of the knockout or hole made for the outlet pipe on the outlet end of the tank.

(2) Constructed on site. Septic tanks constructed on site of cast-in-place concrete, concrete block, or brick shall be constructed to conform with the requirements in subsection (1) of this section except as follows:

(a) Cast-in-place concrete septic tanks shall have a minimum wall thickness of six (6) inches.

(b) Concrete block or brick septic tanks shall have a minimum wall thickness of at least six (6) inches when the design volume is less than 1,000 gallons and a minimum wall thickness of at least eight (8) inches when the design volume is 1,000 gallons or more. All septic tanks constructed of block or brick shall be plastered on the inside with a 1:3 mix (one (1) part cement, three (3) parts sand) of portland cement at least three-eighths (3/8) inch thick or the equivalent using other approved waterproofing material.

(c) The bottom and top of the constructed on site septic tank shall be poured reinforced concrete with a minimum thickness of four (4) inches.

(d) For large capacity (5,000 gallons or more) cast-in-place concrete tanks, maximum liquid depth shall be sixty-six (66) inches.

(3) Prefabricated steel. Prefabricated steel septic tanks shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following:

(a) All prefabricated steel tanks shall be thoroughly coated on all surfaces with a minimum one-eighth (1/8) inch thick coating of liquid asphalt, mastic compound, plastic waterproofing compound, or liquid cured vinyl. Each such septic tank shall be accompanied on site delivery by a one-half (1/2) pint container of the coating material for use in touch-up coating of steel surfaces of the tank exposed through damage in shipping and handling. If such volume is insufficient to repair all damaged areas, additional coating material shall be secured by the installer.

(b) Coated steel baffles shall not be used in prefabricated steel tanks. Sanitary tees of approved plastic, fiberglass, or cast iron shall be required.

(4) Molded plastic, fiberglass. Septic tanks of molded plastic, fiberglass, or other such type of materials shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following: Baffles, if used in lieu of sanitary tees, shall be molded or formed in place so as to be an integral part of the tank. Glued, riveted, or otherwise mechanically attached baffles are not permitted (solvent welding on plastic tanks and resin bonding on fiberglass are acceptable). Such baffles shall be formed of material equal in thickness and rigidity to the tank wall material.

Section 5. Aerobic Treatment Units. (1)

Precast concrete tank. All precast concrete tank aerobic treatment units shall comply with the construction requirements of Section 4(1)(a), (b), (c), (d), (e), (f) and (j) of this regulation, in addition to the following:

(a) All cast-in-place baffles, compartment walls, dividers, weirs, and other devices or structural forms shall be a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. Such reinforcing material shall extend into and along the tank sidewall a minimum of six (6) inches.

(b) Baffles, compartment walls, dividers, weirs, and other such devices or structural forms that are not cast-in-place or may be of dissimilar materials to the tank shall be of corrosion resistant materials, of sufficient structural strength and anchorage to the tank to prevent damage or dislodgement in normal operation, and where requiring routine maintenance, readily accessible through tank access manholes.

(c) All manholes providing access to mechanical or electrical components, chlorinating or other treatment devices, filters, etc., shall be provided with risers extending to grade to allow ready access for maintenance. Covers for such manholes or risers shall be provided with locks or other devices to prevent entry by unauthorized persons. On units which are intended to be installed flush with grade or above grade, which are designed to have an open top, suitable gridding, decking, or other such barriers to entry to the tank shall meet the 150 lb./sq. ft. support strength requirements and shall be so designed and installed to prevent entry to the tank or contact with its contents by unauthorized persons.

(2) Prefabricated steel. All prefabricated steel tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j), Section 4(3)(a), and Section 5(1)(b) and (c) of this regulation, in addition to the following: Coated steel, welded-in-place or mechanically attached baffles, compartment walls, dividers, weirs, and other devices or structural forms shall receive additional corrosion protection materials or coatings when they are exposed directly through splash or immersion on two (2) or more surfaces or sides to tank liquid contents.

(3) Molded plastic, fiberglass. All molded plastic or fiberglass tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j), and Section 5(1)(b) and (c) of this regulation, in addition to the following: Baffles, compartment walls, dividers, weirs, and other such devices or structural forms, if cast or molded in place, shall be formed of material equal in thickness and rigidity to the tank material.

(4) Piping, mechanical devices and electrical equipment, filtration devices, and other appurtenances.

(a) All internal or external piping or conduits and fittings necessary to the transport of tank sewage contents between tank compartments, mechanical equipment, or other components of the treatment process involved shall be of Schedule 40 PVC or ABS plastic pipe. Mixing of PVC and ABS or other dissimilar plastic pipe or fittings is prohibited.

(b) Mechanical fittings and connections where used to connect PVC or ABS piping to equipment or components shall be corrosion resistant and of a type, design, and construction compatible for use with the type of pipe involved.

(c) Mechanical aerators, stirrers, diffusers, rotating disks, and other devices used to provide direct exposure of atmospheric air to tank sewage contents shall be constructed of corrosion resistant materials and of sufficient structural strength to withstand normal operating stresses without damage or deformation resulting in system malfunction for the designed service life of the device.

(d) Pumps, electrical motors, or other such devices shall be of sealed or submersible design and construction when subject to submersion, splash, or corrosive atmosphere within the aerobic treatment unit. Such pumps, motors, or other such devices shall be properly sized and designed for the intended use and duty cycle.

(e) Filters, chemical feeders, and other such devices shall be constructed of corrosion resistant materials and possess sufficient strength to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(f) Electrical controls, switches, ozone generators, ultraviolet generators, and other such devices relying upon electrical current for operation shall be designed and constructed as to be water and corrosive vapor proof in all portions of the device where electrical current carrying components are located. All such devices shall be properly grounded and otherwise designed, constructed, installed, and operated in accordance with National Electrical Code requirements.

(g) All fasteners, brackets, clips, hangers, or other such devices used in the anchorage, installation, mounting, or attachment of unit components and equipment both be designed and constructed of materials possessing sufficient strength and corrosion resistance to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(h) All components of aerobic treatment units which require routine maintenance shall be installed and located within the unit as to be readily accessible. Such components which require replacement, removal, or dismantling for routine maintenance shall be designed, constructed, and installed so as to facilitate their replacement, removal, or dismantling with simple tools. A maintenance instruction manual using pictures and simple language for identification of unit components, maintenance to be performed, components needing routine replacement, removal or dismantling procedures, maintenance interval, and simple troubleshooting procedures shall be included with all units. Such manual shall be provided to the ultimate operator or user of the unit. When aerobic treatment units are to be installed by other persons, rather than the manufacturer or his agents, a detailed installation manual shall be supplied outlining proper installation procedures including hookup to an electrical power source, unit startup procedures, and necessary adjustments or calibrations to be made to meet manufacturer's operating specifications for effluent quality.

Section 6. Dosing and Holding Tanks. (1) All dosing and holding tanks shall comply with the general construction requirements listed in

Section 4 of this regulation for septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Access manholes for dosing or holding tanks shall be extended to grade through the use of suitable risers to permit ease of access for maintenance and/or pumping.

(b) Such manholes in dosing tanks shall provide a minimum opening of eighteen (18) inches by eighteen (18) inches into the tank. Manhole riser lids or covers shall be designed and constructed so as to be watertight and, through the use of locks, locking devices, or other means, prevent access to the tank by unauthorized persons.

(c) All dosing or holding tanks, due to their frequently empty or partially filled condition, shall be designed or installed (using suitable anchoring devices or anti-flotation devices) to prevent flotation or vertical shifting due to ground water pressure.

(2) All dosing and holding tank equipment, controls, and appurtenances shall comply, where applicable, with the requirements of Section 5(4)(a), (b), (d), (f), (g) and (h) of this regulation, in addition to the following:

(a) High water alarms, including an audible alarm system within the structure served by the dosing or holding tank, shall be installed in such tanks and calibrated to sound an alarm whenever the tank liquid level reaches eighty-five (85) percent of capacity.

(b) When pumps are used for dosing effluent into the lateral field system or are used for lifting effluent to a lateral field system above the elevation of the dosing tank, electrically or mechanically operated switch controls shall be provided to permit automatic operation of such pumps. Manually operated pump controls are not permitted. When pumps are used, they shall be installed in an elevated position in respect to the tank bottom, by placement on stands designed for such purpose, concrete blocks, or through the use of suitable hangers to allow for sludge storage space and prolong service life of the pumps. Elevation distance from the tank bottom shall be a minimum of eight (8) inches.

(c) In lieu of pumps, automatic dosing siphons may be used for lateral field dosing where a suitable downhill gradient exists from the elevation of the siphon to the lateral field system.

Section 7. Distribution Devices. (1) Precast concrete.

(a) All precast concrete distribution boxes shall be designed and constructed to provide sufficient strength and structural integrity to withstand a vertical uniform load of 150 lb./sq. ft. on the top of the box.

(b) A minimum end product strength of 4,000 pounds per square inch shall be used in the construction of the box and lid.

(c) A minimum wall thickness of one and one-half (1 1/2) inches shall be used in the construction of distribution box bottoms, sidewalls, and lids and shall be reinforced by a minimum No. 10 gauge six (6) inch by six (6) inch welded steel reinforcing wire, or equivalents, as approved by the cabinet.

(d) Distribution box lids or covers shall meet the requirements of paragraph (a) of this subsection and shall be provided with suitable handles for removal.

(e) Knockouts or holes for inlet and outlet piping shall be of sufficient diameter to accept four (4) inch diameter piping but no more than five (5) inches in diameter at the inside surface of the box.

(f) All distribution devices offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name and the serial number assigned to the manufacturer's plans and specifications approved by the cabinet. This imprint, stencil, or other marking shall be located on the inlet end of the device. Low pressure pipe manifolds shall meet the identification requirements for plastic piping in Section 8 of this regulation.

(2) Molded plastic and fiberglass. Molded plastic or fiberglass distribution boxes shall be designed and constructed to meet the requirements listed in subsection (1)(a), (d), (e) and (f) of this section.

(3) Equal flow type design standards.

(a) Outlet holes or knockouts in equal flow boxes shall be spaced a minimum of seven (7) inches on centers to permit access for application of waterproofing sealants around lateral piping and the external surface of the box sidewall or endwall. Outlet holes or knockouts shall be located a minimum distance of six (6) inches on centers, on a single plane, above the inside bottom surface of the box and a minimum of three (3) inches on centers from adjacent sidewalls in the outlet portion of the box. At the inlet portion of the box a minimum distance of eight (8) inches on centers shall be maintained between outlet holes and the sidewall or endwall to allow for the placement of a baffle to retard incoming effluent velocity.

(b) Centerline of the inlet hole or knockout shall be a minimum distance of one and one-half (1 1/2) inches to a maximum of three (3) inches above the centerline of the outlets.

(c) Provision shall be made on all equal flow boxes for the insertion of a baffle on the inlet end of the box. Such provision may take the form of a double flange, molded or cast-in slot, or other acceptable means to retain the baffle in place. Baffle material and construction shall be equal to that used in the box itself. Baffles and their mounts or retainers shall be so designed as to provide a passageway for reduced velocity effluent between the box bottom and bottom edge of the baffle of no more than two (2) inches in height. The baffle shall extend to one (1) inch above the top of the inlet.

(d) Equal flow boxes shall be designed so as to provide unobstructed access, on removal of the lid or top, for direct, simultaneous viewing of all outlets to facilitate the performance of "water leveling" procedures during installation.

(4) Hillside or drop box type design standards.

(a) Lateral outlet holes or knockouts shall be located a minimum of four (4) inches on centers, on a single plane above the inside bottom surface of the box, and a minimum of three (3) inches on centers from adjacent sidewalls.

(b) Centerline of the inlet hole or knockout shall be a minimum of five (5) inches above the centerline of the lateral outlets and a minimum of three (3) inches above the centerline of the supply line outlet going to the next box in series.

(c) Hillside or drop boxes shall be designed so as to provide sufficient separation distance (twelve (12) inches or greater recommended) between the inlet sidewall and supply line

outlet sidewall to minimize the risk of shortcircuiting of effluent under heavy flow conditions or on steep hillsides where gradient induced flow velocity is created. In lieu of this requirement, box designs offsetting the vertical centerlines of inlets and supply line outlets may be employed.

(5) Plastic low pressure pipe manifolds. All plastic pipe, fittings, and connectors used in low pressure pipe supply lines and manifolds shall be of Schedule 40 PVC or ABS construction and materials.

(6) Alternating valves and devices design standards.

(a) Alternating valves and devices shall meet the general design and construction standards listed in subsection (1)(a) and (d) of this section, and if constructed of precast concrete, subsection (1)(b) and (c) of this section as well.

(b) All alternating valves and devices shall be designed and constructed to provide a positive seal to each outlet when in a closed position. The valving device shall be constructed of corrosion resistant materials and of sufficient strength to withstand normal operational stresses without damage or deformation resulting in valve malfunction.

(c) All alternating valves and devices shall be fitted with risers and watertight lids or covers, extending to grade, which will permit unobstructed access for maintenance, inspection, and operation.

Section 8. Piping, Fittings, and Connectors. (1) Non-perforated pipe - gravity flow usage.

(a) All non-perforated piping used for gravity flow carriage of effluent between septic tanks in series, septic tanks or other treatment units and distribution and/or alternating devices, and for two (2) feet into lateral trenches or beds from distribution devices shall be at least SDR 35 ASTM-D3034 and D3033 for PVC and ASTM-D2751 for ABS. 1,500 lb. crush ASTM-F810 for polyethylene may be used between distribution devices and lateral trenches or beds.

(b) All such non-perforated piping shall be of a minimum internal diameter of four (4) inches.

(c) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the SDR 35 ASTM D3034, D3033, or D2751, 1,500 lb. crush ASTM-F810 designation, and the type of pipe material (PVC, ABS, or polyethylene).

(2) Non-perforated pipe - pressure usage.

(a) All non-perforated piping used for pressurized carriage of effluent between dosing or pumping and distribution and/or alternating devices shall be of 160 psi PVC or ABS.

(b) 160 psi polyethylene pipe or equivalent may be used in all applications listed above in lieu of PVC or ABS piping, except in the construction of any portion of a low pressure pipe (LPP) system where PVC or ABS pipe shall be required.

(c) Each standard section of pipe as supplied by the manufacturer, or in the case of polyethylene or equivalent piping rolls at not greater than ten (10) foot intervals, shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the 160 psi designation, and the type of pipe material.

(d) All such pipe used on an individual low pressure pipe (LPP) system installation shall be of the same type of material - mixing of PVC, ABS, polyethylene, or other equivalent piping is prohibited.

(3) Perforated pipe - gravity flow usage.

(a) All perforated pipe used for gravity flow carriage and distribution of effluent within lateral trenches, beds, mounds, or other such applications shall meet 1,500 lb. crush ASTM-F810 standards for rigid piping and ASTM-F405 for corrugated semi-rigid piping.

(b) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the type of pipe material, and showing the product meets applicable ASTM standards and a bearing load of 1,500 lbs., per foot. In addition, a painted or other clearly marked line or spot shall be marked on each section to denote the top of the pipe.

(c) All such gravity flow usage perforated pipe shall have a minimum internal diameter of two (2) inches.

(d) On two (2) inch or three (3) inch diameter pipe: if one (1) row of holes is use, it shall be located directly opposite the top marking on the pipe and holes shall be three-eighths (3/8) inch in diameter; if two (2) rows of holes are used, they shall be one-quarter (1/4) inch to five-sixteenths (5/16) inch in diameter, and evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. Spacing of holes longitudinally shall be between eight (8) to twelve (12) inches on centers.

(e) All four (4) inch diameter or greater pipe shall have at least two (2) rows of holes five-sixteenths (5/16) to one-half (1/2) inch in diameter, evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. If three (3) holes are used, the center row shall be directly opposite the top marking. Spacing of holes longitudinally shall be between three (3) to twelve (12) inches on centers.

(4) Perforated pipe - pressure usage, low pressure pipe systems (LPP).

(a) Pipe used for pressure carriage and distribution of effluent within lateral trenches, beds, mounds, or other low pressure pipe (LPP) applications shall be of 160 psi PVC or ABS construction.

(b) Pipe shall meet the requirements listed under subsection (2)(c) and (d) of this section.

(c) Minimum pipe internal diameter shall be determined on a case-by-case basis, based upon system size, configuration, and other factors necessary in the design of a low pressure pipe system. In no case shall the internal diameter be less than one (1) inch.

(d) Pipe perforations shall run in a straight line along the bottom of the pipe. Where pre-perforated pipe is unavailable, perforations shall be hand-drilled, and deburred. Hole diameters and hole spacing shall be determined on a case-by-case basis relative to design requirements of the low pressure pipe system. Hole sizes may range from three thirty-seconds (3/32) to one-fourth (1/4) inch in diameter, and hole spacing form three (3) to five (5) feet depending on design requirements.

(5) Fittings and connectors.

(a) Piping elbows, tees, wyes, reducers, end caps, plugs, connectors, and other such fittings shall be designed and constructed for the intended use.

(b) Fittings and connectors shall be formed of materials compatible with the piping to which

they are joined and meet the same standards as that piping. Mixing of different pipe and fitting materials except when expressly designed and constructed for such purpose is prohibited.

(c) Joints formed between fittings, connectors, and/or piping shall be rigid and watertight and shall be made by the methods (solvent welding, chemical fusion, mechanical compression, etc.) applicable to the materials joined.

Section 9. Trench Fill and Barrier Material. (1) Trench fill material.

(a) Gravel or crushed dolomitic limestone shall be used for bedding and trench fill material for gravity flow lateral lines. Foreign matter, dust, and fines shall be removed. Such material shall be of sufficient hardness to attain a three (3) on the Moh's Scale (material hard enough to scratch a copper penny without crumbling or powdering shall be considered acceptable). A size range of three-quarters (3/4) inch to two and one-half (2 1/2) inches in rough diameter shall be used, and material shall be graded for uniformity in size.

(b) Other materials such as blast furnace slag may be considered for usage if such materials can meet or exceed all of the requirements of paragraph (a) of this subsection.

(c) Pea gravel shall be used for bedding and trench fill material for low pressure pipe systems.

(d) Graded sands used for the construction of mound systems or filter units shall be sized according to the design requirements of the system or unit involved.

(e) Crushed rock, gravel, pea gravel, sand, or other such materials meeting the requirements of this section for use as trench fill, lateral bedding material, mound fill, or filter material may be used, as applicable, in the construction of curtain, vertical, and underdrain ground water drainage systems.

(2) Trench barrier material.

(a) Straw, hay, grass clippings, or synthetic filter fabrics shall be used in all lateral trenches, beds, mounds, subsurface sand filters, or ground water drainage systems to provide a barrier to the entrance of soil backfill into the rock, gravel, pea gravel, or sand fill in such trenches, beds, mounds, filters, or drainage systems.

(b) Other similar materials may be considered for such usage provided that they can be demonstrated to perform in an equivalent manner with the above and do not restrict air movement within the trench, bed, mound, filter, or drainage system.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 23, 1985 at 1 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 & Development

904 KAR 1:013E. Payments for acute care and mental hospital inpatient services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: December 30, 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 acute care and mental hospital inpatient services.

Section 1. Acute Care Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised January 1, 1986 [August 3, 1985], which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual

inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be re-established and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Peer grouping. Acute care hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in the same manner with regard to the upper limit to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only.

(5) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to operating and capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Operating costs are all costs except professional (physician) and capital costs. Capital costs are interest and depreciation related to plant and equipment. The minimum occupancy factor is not applicable with regard to operating costs of mental hospitals.

(6) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(7) [(6)] Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays and/or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served) and the upper limit is established at 105 percent for those mental hospitals serving a disproportionate number of poor patients (defined as thirty-five (35) percent or more Medicaid clients as compared to the total number of clients served). For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up).

(8) [(7)] Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(9) [(8)] Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(10) [(9)] Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-State Hospitals. Participating out-of-state hospitals, except those where the other state's Medicaid Program pays on the basis of diagnosis related groupings, shall be reimbursed for covered services rendered eligible Kentucky Medicaid recipients at the lower of the rate paid by the other state's Medicaid Program or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size (or total array, in the instance of mental hospitals), except that payments shall not exceed charges. For those participating

out-of-state hospitals where the other state's Medicaid Program pays on the basis of diagnosis related groupings, reimbursement for covered services rendered eligible Kentucky Medicaid recipients shall be at the lower of eight (80) percent of the hospital's covered charges or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size. The operating cost upper limits shall be appropriately adjusted to include capital costs. The appropriate amount to include for capital costs shall be the average allowable per diem capital cost for the peer group (not adjusted for occupancy). Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 30, 1985
FILED WITH LRC: December 30, 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 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: December 17, 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 November 14, 1985 [September 26, 1985], 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. 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 the maximum set at 102 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 percent of 102 percent of the median of allowable trended costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 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 maximum (upper limit) shall be set at 110 percent of the median of the array.

(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 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) No increase will be allowed in capital costs. [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 allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price. [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)."]

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(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 so as to reasonably take into account economic conditions and trends.

(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)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$27.00 & below	$.92	$.58
28.00 - 28.99	$.86	$.50
29.00 - 29.99	$.78	$.41
30.00 - 30.99	$.70	$.32
31.00 - 31.99	$.61	$.21
32.00 - 32.99	$.51	$.09
33.00 - 33.95	$.35	-

Maximum Payment $33.95

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

(Effective 8-3-85)

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	$ .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)

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	-

Maximum Payment $48.72*

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

(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 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 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 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 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 occupancy factor and the median cost center per diem upper limits.

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

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

(10) "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) "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.)

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: December 17, 1985 at 10 a.m.

AS AMENDED

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(As Amended)

11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 164.740 to 164.785
PURSUANT TO: KRS 13A.100, 164.748(4), (9), (10), (14)
EFFECTIVE: January 3, 1986
NECESSITY AND FUNCTION: In accordance with KRS 131.565 and the Federal Deficit Reduction Act of 1984, the authority may enter agreements [has entered an agreement] with the Kentucky Revenue Cabinet and with the federal government to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. This regulation sets forth the process for notification and appeal afforded to individuals in implementing a set off of authority claims through the Kentucky Revenue Cabinet or the Internal Revenue Service.

Section 1. Notification. The authority shall send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which set off is sought pursuant to KRS 131.560 or federal law. Said notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain such additional information as the authority may prescribe. Notification shall be sent not less than thirty (30) days prior to referring the claim to the Kentucky Revenue Cabinet or federal government for set off, and shall be deemed effective when placed with the Postal Service for delivery.

Section 2. Disputed Claims. (1) Any person notified pursuant to the Section 1 of this regulation may petition the authority in writing within thirty (30) days after notification to dispute the claim of the authority. This written statement of appeal shall specify the basis on which the authority's claim is disputed, including any legal or equitable defense the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit such additional documentation as the authority may require.

(2) Upon receipt of a written statement of appeal on a timely basis, the authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky Revenue Cabinet or federal government, and shall make a final written determination of the validity of the claim. The final determination shall be based on any documentation submitted by the petitioner and relevant records of the authority, which shall be made available to the petitioner upon requests. Such documentation shall constitute the record of the appeal.

(3) Upon a final determination upholding, in part or in whole, the claim of the authority, the claim may be referred to the Kentucky Revenue Cabinet in accordance with KRS 131.565 or to the federal government in accordance with federal law and regulations.

Section 3. (1) State income tax set off - Any person, notified by the Kentucky Revenue Cabinet that an income tax refund is being withheld because of a claim of the authority, who disputes the validity of the authority's claim, may petition the authority within thirty (30) days following said notification for a hearing in accordance with subsection (3) of this section.

(2) Federal income tax set off - Any person who disputes the validity of the authority's claim, as determined in accordance with Section 2 of this regulation, may, within thirty (30) days following the authority's written determination, petition the authority for a hearing in accordance with subsection (3) of this section.

(3) A hearing requested pursuant to this section may be conducted by a hearing officer or committee appointed by the authority's Board of Directors. At such a hearing, the petitioner may appear in person and may, at his/her expense, be represented by counsel. Evidence may be presented by testimony and/or written documentation. The hearing officer or committee

shall prepare written findings of fact and conclusions for submission to the full board. The decision shall be made by [issued in the name of] the authority, and shall be final and conclusive as to all parties.

PAUL P. BORDEN, Executive Director
APPROVED BY AGENCY: October 22, 1985
FILED WITH LRC: November 15, 1985 at noon.

DEPARTMENT OF PERSONNEL
As Amended

101 KAR 1:051. Compensation plan.

RELATES TO: KRS 18A.030, 18A.075, 18A.110, 18A.165
PURSUANT TO: KRS 13A.100, 18A.075, 18A.110
EFFECTIVE: January 3, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to prepare and submit to the Personnel Board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities, the Secretary of the Finance and Administration Cabinet, and after conducting an annual wage and salary survey of relevant labor markets, the Commissioner of Personnel shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity and external market competitiveness. The plan shall provide pay grades or specific salary rates as appropriate for the various classes. Each job class shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for classes shall be consistent with the functions outlined in the classification plan.

(2) When the Commissioner of Personnel determines through relevant salary surveys that the state's overall compensation plan is inadequate in relation to that of other employers, he may authorize, upon certification of the State Budget Director and the Office for Policy and Management as to the availability of funds, a general adjustment of all pay grades in the pay structure to provide salary rates which are comparable to the external market. Additional surveys may be conducted as necessary to determine market conditions for specific classes.

(3) The Commissioner of Personnel shall submit the plan to the Personnel Board for its approval. The Personnel Board shall present the plan, through the Secretary of the Finance and Administration Cabinet, to the Governor for his final approval.

Section 2. Appointments. Initial appointments to state service shall be made at the minimum rate of the pay grade established for the class unless the Commissioner of Personnel authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the class. Such additional qualifications must be in the same or related area of the job duties of the class to which the appointment is to be made. Employees possessing similar qualifications employed in the same class, by the same agency, in the same locality shall have their salaries adjusted to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. Appointing authorities, with the approval of the Commissioner of Personnel, may place re-employed, reinstated, and probationally appointed former employees at a salary determined by one (1) of the following methods:

(1) Reinstatement to a class having the same or lower pay grade that is currently assigned to the employee's former class:

(a) Request the same salary that was paid at the time of separation from the classified service if such salary is within the current pay grade;

(b) Request a salary higher than that paid at the time of separation from the classified service due to salary schedule or pay grade adjustments;

(c) Request a lower salary than that paid at the time of separation from the classified service if such a salary is within the current pay grade;

(d) Request a salary in accordance with the standards used for making new appointments.

(2) Re-employment or probationary appointment of former employees to the same, lower, or higher pay grade:

(a) Request the same salary that was paid at the time of separation from the classified service if such salary is within the current pay grade;

(b) Request a salary higher than that paid at the time of separation from the classified service due to salary schedule or pay grade adjustments;

(c) Request a lower salary than that paid at the time of separation from the classified service if such salary is within the current pay grade;

(d) Request a salary in accordance with the standards used for making new appointments.

(3) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar class within one (1) year from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the new pay grade.

(4) Employees re-employed, reinstated or former employees probationally appointed to a salary:

(a) Below the midpoint of the pay grade at the time of completion of the probationary period shall be considered for a probationary increment;

(b) Which equals or exceeds the midpoint of the pay grade at the time of completion of the probationary period may be considered for a probationary increment. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered

for an increment at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five (5) percent upon promotion[; if an employee's salary is above the maximum of the pay grade for the class to which he is promoted, the employee shall receive a lump-sum payment of five (5) percent of his annual base salary]. An employee may receive a promotional increase of five (5) percent on the first of the month following successful completion of the probationary period[; if an employee's salary is above the maximum of the pay grade he may receive a lump-sum payment of five (5) percent of his annual base salary]. In no case shall the employee's salary be below the minimum of the higher grade following promotion. If the promotion is to a classification which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the Commissioner of Personnel, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. [If an employee's salary is above the maximum of the pay grade, a lump-sum payment of ten (10) percent or fifteen (15) percent of the employee's annual base salary may be granted.] A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary reduced to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Transfer. An employee who is transferred to a job class having the same pay grade shall be paid the same salary that he received prior to the transfer.

(4) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall receive a salary increase of five (5) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. [In those cases where the employee's salary is above the maximum of the pay grade for the new class, the employee shall receive a lump-sum payment of five (5) percent of his annual base salary rate.] An employee whose position is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification, even if that salary is above the maximum of the new pay grade.

(5) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. [In those cases where the employee's salary is above the maximum of the pay grade for the new class, the employee may receive a lump-sum payment of five (5) percent of his annual base salary.] An employee whose current salary exceeds the pay grade maximum assigned to his class following reallocation of his position shall retain that current salary.

(6) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may receive a five (5) percent increase upon detail to a higher class except that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade.

(7) Reversion.

(a) An employee who is returned to his former class after failure to complete the probationary period following promotion or following detail assignment to a higher class shall have his salary reduced to a rate received prior to such promotion or detail assignment and is entitled to all salary advancements and adjustments he would have received had he not left the class even if these advancements place his salary above the maximum of the pay grade applicable to the class to which the employee is returning.

(b) An employee who is returned to a position in the classified service following transfer or promotion to the unclassified service shall have his salary reduced to the rate received prior to the promotion or transfer and is entitled to all salary advancements and adjustments he would have received had he not left the class even if these advancements place his salary above the maximum of the pay grade applicable to the class to which the employee is returning.

(c) The salary for employees who obtain merit status but later resign the classified position to accept appointment to an unclassified position shall have their salary determined, upon re-entry to the classified service, the same as employees who are reverted if there has been no break in service.

(8) Pay grade changes. An employee who is advanced to a higher pay grade through a class re-evaluation and grade adjustment under Section 9 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(9) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions may have his salary adjusted upon request by the appointing authority and approval by the commissioner: promotional increase, reallocation, detail to special duty, or class grade changes subsequent to the adoption of subsection (8) of this section. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.

(c) Inasmuch as the appointing authority has the option of not providing salary increases under subsection (9) of this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

Section 5. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete their probationary period with satisfactory performance shall be granted a probationary increment at the beginning of the month following completion of the probationary

period, except as specified under Section 3(4) of this regulation. The service may be provisional or probationary. Employees completing a probationary period following promotion shall not be eligible for a probationary increment under this section.

(2) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part-time to full-time, part-time service shall be counted in determining increment eligibility for a full-time employee; in those cases where an employee is changed from full-time to part-time, full-time service shall be counted in determining increment eligibility for a part-time employee.

(3) Annual increment dates will be established:

(a) Following completion of probation, except probation following promotion, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(4) of this regulation.

(b) When an employee returns from leave without pay pursuant to Section 7(2) of this regulation.

(4) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade.

(b) Receives a salary adjustment as a result of his position being reallocated or reclassified.

(c) Is transferred.

(d) Receives a demotion.

(e) Is approved for detail to special duty.

(f) Receives an educational achievement increase.

(g) Returns from military leave.

(h) Has his salary advanced above the maximum of the pay grade or has his salary returned to the pay grade due to a salary schedule change or pay grade adjustment.

(i) Is promoted or receives a promotional increase after completion of probation following promotion.

(5) Annual increment. All employees shall receive statutory annual increments on the employee's regularly scheduled increment date. An employee whose annual increment places his salary above the maximum of the pay grade shall have his annual increment added to his annual base pay. For purposes of calculating the statutory annual increment:

(a) Educational achievement increases, employee suggestion systems awards and overtime and/or compensatory leave payments shall not be included in "gross annual salary or wages."

(b) A lump-sum payment made to an employee pursuant to Sections 4(1), 4(4), and 4(5) of this regulation, and previous regulatory provision providing for a continuous service award shall be included in "gross annual salary or wages."

Section 6. Educational Achievement Increase. Subject to the approval of the Commissioner of Personnel, any permanent, full-time employee who, after completion of his initial probationary period, satisfactorily completes 260 classroom hours (or the equivalent as determined by the Commissioner of Personnel) of job related instruction or receives a high school diploma or GED is eligible for a lump-sum educational achievement increase of ten (10) [five (5)] percent of his annual base salary the first of the month following the approval of the increase.

Section 7. Return from Leave. (1) Leave with pay. The appointing authority shall grant an employee on leave with pay or returning to duty from leave with pay an annual increment on the employee's regularly scheduled increment date.

(2) Leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment pursuant to Section 5(2) of this regulation.

(3) Military Leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received.

Section 8. Salary Schedule Adjustment. When the Commissioner of Personnel authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 9(1) of this regulation, the Commissioner of Personnel may make a new or different pay grade applicable to a class of positions. Persons employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 4(8) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. [Employees whose salaries are already within the higher grade shall retain their current salaries following the adjustment.] Employees in a class assigned to a lower pay grade through class re-evaluation shall retain their current salary even if that salary is above the maximum rate of the lower grade. [The Commissioner of Personnel shall review the use of this provision for retaining employees' salaries above pay grade maximums and report to the Board July 1, 1984.]

(3) Recruitment difficulties. Whenever the Commissioner of Personnel determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same rate. When the Commissioner of Personnel determines that it is not possible to relieve salary inadequacies using this provision, Section 9(2) of this regulation shall apply.

(4) Increases resulting from this section

shall not affect an employee's annual increment date.

Section 10. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the Commissioner of Personnel after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the Commissioner of Personnel may authorize the payment of a supplemental shift premium for those employees directed to work an evening or night shift. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment. The employee's loss of shift differential pay shall not be a basis for an appeal to the Personnel Board.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: October 29, 1985
FILED WITH LRC: October 29, 1985 at 2 p.m.

AMENDED AFTER HEARING

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

401 KAR 31:010. General provisions for hazardous wastes.

RELATES TO: KRS 224.830 through 224.877, 224.994
PURSUANT TO: KRS Chapter 13A, 224.033, 224.864
NECESSITY AND FUNCTION: KRS 224.864(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and list hazardous waste. This regulation establishes the general provisions necessary for identification and listing of a hazardous waste.

Section 1. Purpose and Scope. (1) This chapter identifies those wastes which are subject to regulation as hazardous wastes under 401 KAR Chapters 32 through 40 and which are subject to the notification and permitting requirements of KRS 224.830 through 224.877. In this chapter:

(a) This regulation defines the terms "waste" and "hazardous waste," identifies those wastes which are excluded from regulation under 401 KAR Chapters 32 through 40 and establishes special management requirements for hazardous waste produced by small quantity generators and hazardous waste which is used, reused, recycled or reclaimed.

(b) 401 KAR 31:020 sets forth the criteria used by the cabinet to identify characteristics of hazardous waste and to list particular hazardous wastes.

(c) 401 KAR 31:030 identifies characteristics of hazardous waste.

(d) 401 KAR 31:040 lists particular hazardous wastes.

(2)(a) The definition of waste contained in this chapter applies only to wastes that are also hazardous for purposes of the regulations implementing those provisions of KRS Chapter 224 relating to hazardous waste management [with respect to the hazardous waste regulations implementing KRS 224.212, 224.213, and 224.2201 through 224.2215, and KRS 224.862 through 224.877]. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.033(10), [and] 224.071, and 224.877. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(b) This chapter identifies only some of the materials which are wastes and hazardous wastes under KRS 224.033(10), 224.071, and 224.877. A material which is not defined as a waste in this chapter, or is not a hazardous waste identified or listed in this chapter is still a waste and a hazardous waste for purposes of this regulation if: [A material which is not a hazardous waste identified in this chapter is still a hazardous waste for purposes of those sections if:]

1. [(a)] In the case of KRS 224.033(10), the cabinet has reason to believe that the material may be a waste within the meaning of KRS 224.005 and a hazardous waste within the meaning of KRS 224.005 ; or [(24)(b).]

2. [(b)] In the case of KRS 224.071, the statutory elements are established.

(3) For the purposes of Sections 2, 6, 8 and 9 of this regulation:

(a) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(b) "Sludge" has the same meaning used in Section 1 of 401 KAR 30:010;

(c) A "by-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(d) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(e) A material is "used or reused" if it is

either:

1. Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

2. Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(f) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.

(g) A material is "recycled" if it is used, reused, or reclaimed.

(h) A material is "accumulated speculatively" if it is accumulated before being recycled.

1. A material is not accumulated speculatively, if the person accumulating it can show:

a. That the material is potentially recyclable and has a feasible means of being recycled; and

b. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

2. In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from regulation under Section 4(3) of this regulation are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

Section 2. Definition of a Waste. (1)(a) A "waste" is any discarded [garbage, refuse, sludge or any other waste] material that [which] is not excluded by [under] Section 4(1) of this regulation or that is not excluded by a variance granted under Section 1 or 2 of 401 KAR 30:080, or Section 8 or 9 of this regulation.

(b) A "discarded material" is any material which is:

1. "Abandoned," as explained in subsection (2) of this section; or

2. "Recycled," as explained in subsection (3) of this section; or

3. Listed in subsection (4) of this section.

(2) Materials are waste if they are "abandoned" by being: [An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:]

[(a) Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or]

[(b) Has served its original intended use and sometimes is discarded; or]

[(c) Is a manufacturing or mining by-product and sometimes is discarded.]

[(3) A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:]

(a) Disposed of; or

(b) Burned or incinerated[, except where the material is being burned as a fuel for the purpose of recovering usable energy]; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated. [Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.]

(3) The following materials are wastes if they are "recycled" - or accumulated, stored, or treated before recycling - as specified in paragraphs (a) through (d) of this subsection.

(a) "Used in a manner constituting disposal."

1. Materials noted with a "(waste)" in column (1) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Applied to or placed on the land in a manner that constitutes disposal; or

b. Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are applied to the land and that is their ordinary manner of use.

(b) The following materials are "burned for energy recovery:"

1. Materials noted with a "(waste)" in column (2) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Burned to recover energy;

b. Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are themselves fuels.

3. Waste from burning any of the materials exempted from regulation by Section 6(1)(c)4, 6, 7, or 8 of this regulation.

(c) The following materials are "reclaimed." Materials noted with a "(waste)" in column (3) of Table 1 in paragraph (e) of this subsection are wastes when reclaimed.

(d) The following materials are "accumulated speculatively." Materials noted with a "(waste)" in column (4) of Table 1 in paragraph (e) of this subsection are wastes when accumulated speculatively.

(e) The following Table 1 identifies materials which are wastes when "used in a manner constituting disposal," "burned for energy recovery," "reclaimed," or "accumulated speculatively." Materials noted with the word "(waste)" in Table 1 are considered to be wastes for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224. Materials noted with a dash "-" in Table 1 are not considered to be a waste for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224.

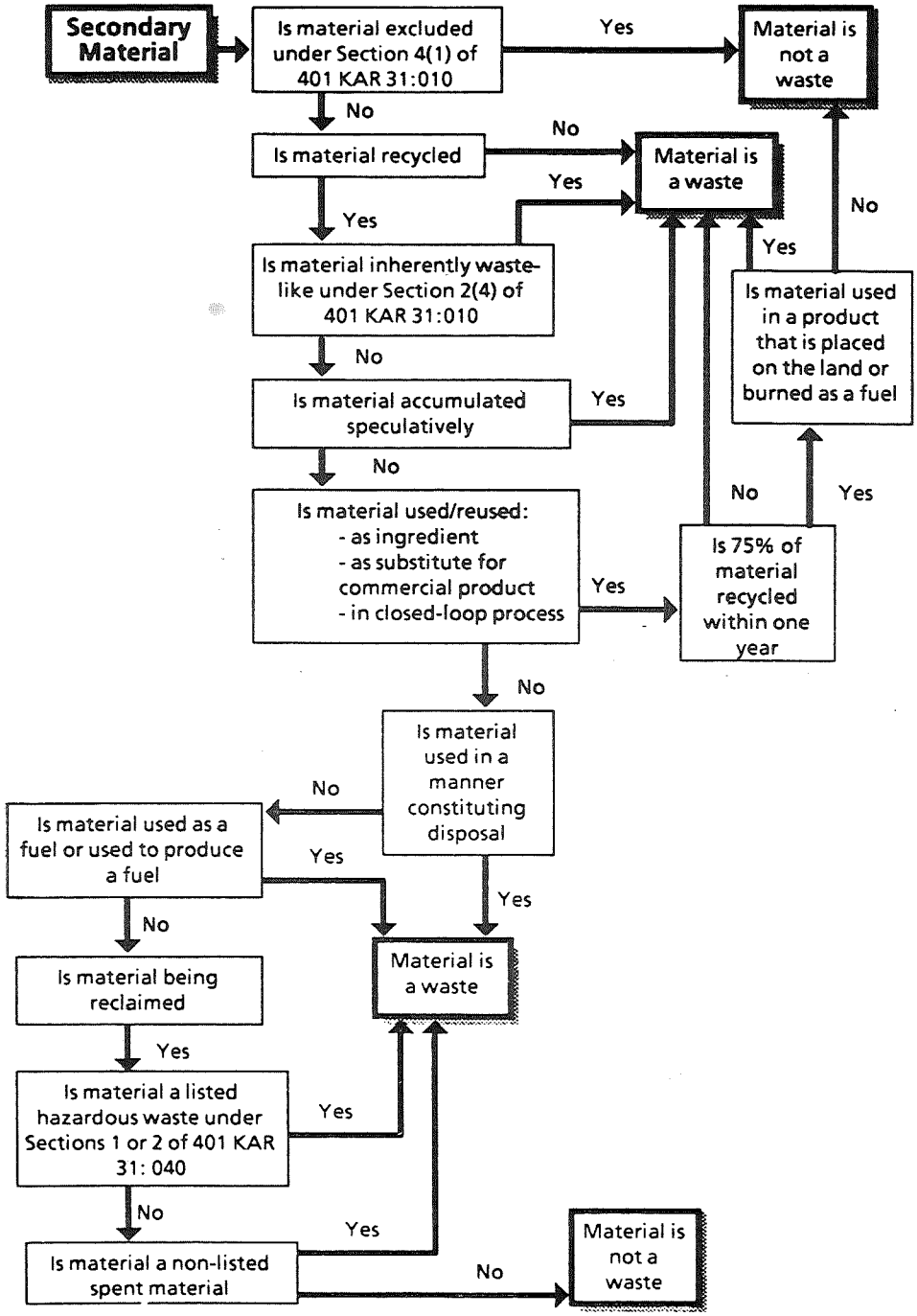
TABLE 1

	Use constituting disposal 401 KAR 31:010 Section 2(3)(a) (1)	Energy recovery/ fuel 401 KAR 31:010 Section 2(3)(b) (2)	Reclamation 401 KAR 31:010 Section 2(3)(c) (3)	Speculative accumulation 401 KAR 31:010 Section 2(3)(d) (4)
Spent materials	(waste)	(waste)	(waste)	(waste)
Sludges (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
Sludges exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
By-products (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
By-products exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
Commercial chemical products listed in Section 4 of 401 KAR 31:040	(waste)	(waste)	-	-
Scrap metal	(waste)	(waste)	(waste)	(waste)

NOTE - The terms "spent materials," "sludges," "by-products," and "scrap metal" are defined in Section 1 of this regulation.

(f) The following Table 2 is a decision tree for deciding which secondary materials are wastes when recycled.

TABLE 2. Decision Tree for Deciding Which Secondary Materials Are Wastes When Recycled



(4) The following materials are wastes when they are recycled in any manner: [A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.]

(a) Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 (chlorinated dioxins, chlorinated dibenzofurans and chlorinated phenols).

(b) The cabinet will use the following criteria to add wastes to the list in paragraph (a) of this subsection:

1.a. The materials are ordinarily disposed of, burned, or incinerated; or

b. The materials contain toxic constituents listed in Section 1 of 401 KAR 31:170 and these constituents are not ordinarily found in raw materials or products for which the material substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recyclying process; and

2. The material may pose a substantial hazard to human health and the environment when recycled.

(5) "Materials that are not wastes when recycled."

(a) Materials are not wastes when they can be shown to be recycled by being: [A "manufacturing or mining by-product" is a material that is not one (1) of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one (1) of the steps in a manufacturing or mining process and is processed through the next step of the process within a short time.]

1. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

2. Used or reused as effective substitutes for commercial products; or

3. Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(b) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraph (a)1 through 3 of this subsection):

1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

2. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

3. Materials accumulated speculatively; or

4. Materials listed in subsection (4)(a) of this section.

(6) "Documentation of claims that materials are not wastes or are conditionally exempt from regulation." Respondents in actions to enforce regulations implementing the provisions in KRS Chapter 224 relating to hazardous waste management who raise a claim that a certain material is not waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

Section 3. Definition of a Hazardous Waste. (1) A waste, as defined in Section 2 of this regulation is a hazardous waste if:

(a) It is not excluded from regulation as a hazardous waste under Section 4(2) of this regulation; and

(b) It meets any of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in 401 KAR 31:030.

2. It is listed in 401 KAR 31:040 and has not been excluded from the lists under [in Section 1(2) of] 401 KAR 31:060 and 401 KAR 31:070 [31:040].

3. It is a mixture of any waste and a hazardous waste that is listed in 401 KAR 31:040 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in 401 KAR 31:040, unless the resultant mixture no longer exhibits any characteristics of hazardous waste identified in 401 KAR 31:030.

4. It is a mixture of any waste and one (1) or more hazardous wastes listed in 401 KAR 31:040 and has not been excluded from this paragraph under Section 1(2) of 401 KAR 31:040, however, the following mixtures of wastes and hazardous wastes listed in 401 KAR 31:040 are not hazardous wastes (except by application of subparagraph 1 or 2 of this paragraph) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

a. One (1) or more of the following spent solvents listed in Section 3 of 401 KAR 31:040, carbon tetrachloride, tetrachloroethylene, trichloroethylene provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 3 of 401 KAR 31:040, methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed twenty-five (25) parts per million; or

c. One (1) of the following wastes listed in

Section 4 of 401 KAR 31:040, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

d. A discarded commercial chemical product, or chemical intermediate listed in Section 5 of 401 KAR 31:040, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph, "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

e. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 401 KAR 31:040, provided that the annualized average flow of laboratory wastewater does not exceed one (1) percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one (1) part million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

(2) A waste which is not excluded from regulation under subsection (1), paragraph (a) of this section becomes a hazardous waste when any one (1) of the following events occur:

(a) In the case of a waste listed in 401 KAR 31:040 of this regulation when the waste first meets the listing description set forth in 401 KAR 31:040;

(b) In the case of a mixture of solid waste and one (1) or more hazardous wastes when a hazardous waste listed in 401 KAR 31:040 is first added to the waste; or

(c) In the case of any other waste (including a waste mixture) when the waste exhibits any of the characteristics identified in 401 KAR 31:030.

(3) Unless and until it meets the criteria of subsection (4) of this section:

(a) A hazardous waste will remain a hazardous waste.

(b)1. Except as otherwise provided in subparagraph 2 of this paragraph, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2. The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one (1) or more of the characteristics of hazardous waste: Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332). [Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.]

(4) Any waste described in subsection (3) of this section is not a hazardous waste if it meets the following criteria:

(a) In the case of any waste, it does not exhibit any of the characteristics of hazardous waste identified in 401 KAR 31:030.

(b) In the case of a waste which is a listed waste under 401 KAR 31:040, contains a waste listed under 401 KAR 31:040 or is derived from a waste listed in 401 KAR 31:040, it also has been excluded from Section 1(3) [(2)] of 401 KAR 31:060 and 401 KAR 31:070 [31:040].

Section 4. Exclusions. (1) The following materials are not wastes for the purpose of this chapter:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment;

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended; however, this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq.;

(e) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process;

(f) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in Section 1(3) of this regulation.

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 1(3) of this regulation.

(h) [(f)] Mining overburden returned to the mine site; and

(i) [(g)] Material from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(2) Any waste which meets the requirements of this subsection is not a hazardous waste.

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recover facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or

otherwise managing hazardous wastes for the purposes of regulation under the waste management regulations, if such facility:

1. Receives and burns only:

a. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); or

b. Waste from commercial or industrial sources that does not contain hazardous waste; and

2. Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(b) Agricultural wastes generated by any of the following and which are returned to the soils as fertilizers:

1. The growing and harvesting of agricultural crops.

2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(f)1. Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in 401 KAR 31:040 due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

a. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

b. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

c. The waste is typically and frequently managed in non-oxidizing environments.

2. Specific wastes which meet the standard in subparagraph 1a, b and c of this paragraph (so long as they do not fail the test for any other characteristic) are:

a. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

b. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

c. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

d. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

e. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

f. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

g. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

h. Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(h) Cement kiln dust waste.

(i) Waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(3) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 until it exits the unit in which it was generated unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or 401 KAR Chapter 32, 33, 34, 35, 38 and 39 or to the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or

2. The sample is being transported back to the sample collector after testing; or

3. The sample is being stored by the sample collector before transport to a laboratory for testing; or

4. The sample is being stored in a laboratory before testing; or

5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further

testing of the sample may be necessary).

(b) In order to qualify for the exemption in paragraphs (a)1 and 2 of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

1. Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

2. Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

a. Assure that the following information accompanies the sample:

(i) The sample collector's name, mailing address, and telephone number;

(ii) The laboratory's name, mailing address, and telephone number;

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample.

b. Package the sample so that it does not leak, spill, or vaporize from its packaging.

c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (a) of this subsection.

Section 5. Special Requirements for Hazardous Waste Generated by Limited Quantity [Small] Generators. (1) A generator is a limited [small] quantity generator in a calendar month if he generates less than 100 [1,000] kilograms of hazardous waste in that month.

(2) Except for those wastes identified in subsections (5), [and] (6), (7), and (10) of this section, a limited [small] quantity generator's hazardous wastes are not subject to regulation under 401 KAR Chapters 32 through 39 and the notification requirements of KRS 224.864(3) provided the generator complies with the regulations [requirements] of subsections (6), (7), and (10) of this section.

(3) Hazardous waste that is [beneficially used or re-used or legitimately] recycled [or reclaimed] and that is excluded from [certain] regulation under Sections 6(1)(b)3 and 6(1)(b)5, or 6(1)(c) of this regulation or Section 7 of 401 KAR 36:040 [by Section 6(1) of this regulation,] is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the [special] requirements of Sections 6(2) and (3) of this regulation and 401 KAR 36:030, 401 KAR 36:040, and 401 KAR 36:060 is included in the quantity determination of this section, and is subject to the requirements of this section.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) His hazardous waste when it is removed from on-site storage; or

(b) Hazardous waste produced by on-site treatment of his hazardous waste.

(5) If a limited [small] quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.855 and 224.864 through 224.877:

(a) A total of one (1) kilogram of acute hazardous wastes [commercial chemical products and manufacturing chemical intermediates having the generic names listed in Section 4(5) of 401 KAR 31:040 and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specification, would have the generic names] listed in Sections 2, 3, and 4(5) of 401 KAR 31:040.

(b) A total of 100 kilograms of any residue or contaminated soil, waste [water] or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes [commercial chemical products or manufacturing chemical intermediates having the generic names] listed in Sections 2, 3 and 4(5) of 401 KAR 31:040[, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in Section 4(5) of 401 KAR 31:040].

(6) A limited [small] quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsection (5)(a) or (b) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under 401 KAR Chapters 32 through 39 and the notification and permitting requirements of KRS 224.830 through 224.877. The time period set out in 401 KAR 32:030, Section 5 for accumulation of wastes on-site begins for a limited [small] quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a limited [small] quantity generator to be excluded from full regulations under this section, the generator must:

(a) Comply with the requirements of 401 KAR 32:010, Section 2;

(b) If he stores his hazardous waste on-site, stores it in compliance with the requirements of subsection (6) of this section; and

(c) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

1. Permitted under 401 KAR Chapter 38;

2. In interim status under 401 KAR Chapters 35 and 38;

3. Located outside of Kentucky and is permitted under 40 CFR Part 270 or in interim status under 40 CFR Parts 270 and 265;

4. Located outside of Kentucky and is authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271; [or]

5. Permitted to manage municipal or industrial solid waste and is specifically approved for that waste; or

6. A facility which:

a. Beneficially uses or reuses, or legitimately recycles or reclaims his waste; or

b. Treats his waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(8) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these

reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section unless the mixture meets any of the characteristics of hazardous wastes identified in 401 KAR 31:030.

(9) If a limited [small] quantity generator mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture is subject to full regulation.

(10) If a limited quantity generator's hazardous wastes are mixed with used oil, the mixture is subject to Sections 7 through 11 of 401 KAR 36:040 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

Section 6. [Special] Requirements for Recyclable Materials [Hazardous Waste Which is Used, Re-used, Recycled or Reclaimed].

(1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (2) and (3) of this section, except for the materials listed in paragraphs (b) and (c) of this subsection. Hazardous wastes that are recycled will be known as "recyclable materials." [Except as otherwise provided in subsection (2) of this section, a hazardous waste which meets any of the following criteria is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 and is not subject to the notification and permitting requirements of KRS 224.830 through 224.877 until the cabinet promulgates regulations to the contrary:]

[(a) It is being beneficially used or re-used or legitimately recycled or reclaimed.]

(b) The following recyclable materials are not subject to the requirements of this section but are regulated under 401 KAR Chapter 36 and all applicable provisions in 401 KAR Chapter 38: [It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.]

1. Recyclable materials used in a manner constituting disposal (see 401 KAR 36:030);

2. Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 or 401 KAR 35:240 (see 401 KAR 36:040);

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 and 35:240 (see 401 KAR 36:050);

4. Recyclable materials from which precious metals are reclaimed (see 401 KAR 36:060); and

5. [4.] Spent lead-acid batteries that are being reclaimed (see 401 KAR 36:070).

(c) The following recyclable materials are not subject to regulation under 401 KAR Chapters 32 through 38, and are not subject to the notification requirements of KRS 224.864(3): [It is one (1) of the following materials being used, reused, recycled or reclaimed in the specified manner: spent pickle liquor which is reused in wastewater treatment at a facility holding a National Pollutant Discharge Elimination System (NPDES) permit, or which is being accumulated, stored, or physically, chemically or biologically treated before such reuse.]

1. Industrial ethyl alcohol that is reclaimed;

2. Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste **but is recycled in some other manner than being burned for energy recovery;**

4. Scrap metal;

5. Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

6. Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; [or]

7. Coke and coal tar from the iron and steel industry that contains hazardous waste from the iron and steel production process;

8.a. Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Section 7(5) of 401 KAR 36:040 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

b. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Section 7(5) of 401 KAR 36:040; and

c. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Section 7(5) of 401 KAR 36:040; and

9. Petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one (1) or more of the characteristics of hazardous waste in 401 KAR 31:030.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirements under KRS 224.864(3) and 224.873, except as provided in subsection (1) of this section. [Except for those wastes listed in subsection (1)(c) of this section, a hazardous waste that is a sludge, or that is listed in Section 2 or 3 of 401 KAR 31:040, or that contains one (1) or more hazardous wastes listed in Section 2 or 3 of 401 KAR 31:040, and that is transported or stored prior to being used, re-used, recycled or reclaimed is subject to the following requirements with respect to such transportation and storage:]

[(a) The notification and permitting requirements under KRS 224.830 through 224.877.]
[(b) 401 KAR Chapter 32.]
[(c) 401 KAR Chapter 33.]
[(d) The applicable provisions of 401 KAR 34:010 through 34:210.]
[(e) The applicable provisions of 401 KAR 35:010 through 35:210.]
[(f) 401 KAR Chapters 38 and 39 with respect to storage facilities.]
[(g) 401 KAR 30:020.]

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 401 KAR 34:010 through 34:210; 401 KAR 35:010 through 35:210; and 401 KAR Chapter 38 and the notification requirements under KRS 224.864(3) and 224.866, except as provided in subsection (1) of this section. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection (1) of this section:

1. The owner or operator shall submit a notification to the cabinet; and

2. Sections 2 and 3 of 401 KAR 35:050 (dealing with the use of the manifest and manifest discrepancies).

Section 7. Residues of Hazardous Waste in Empty Containers. (1)(a) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsection (2) of this section, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 but is subject to regulations under 401 KAR Chapter 47.

(b) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsection (2) of this section is subject to regulations under 401 KAR Chapters 32, 33, 34, 35, 38 and 39, and 401 KAR 30:020 and 30:030.

(2)(a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Sections 2, 3, or 4(5) [5(3)] of 401 KAR 31:040, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

2. No more than 2.5 centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner; or

3.a. No more than three (3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or

b. No more than 0.3 (three tenths) percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held an acute [a] hazardous waste listed [identified] in Sections 2, 3, or 4(5) [5(3)] of 401 KAR 31:040 is empty if:

1. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

2. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by test conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

Section 8. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-case Basis. (1) The cabinet may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Section 6(1)(b)3 of 401 KAR 31:010 should be regulated under Section 6(2) and (3) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained or because the materials being accumulated or stored together are incompatible. In making this decision, the cabinet will consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

(2) The procedures for this decision are set forth in Section 9 of this regulation.

Section 9. Procedures for Case-by-case Regulation of Hazardous Waste Recycling Activities. The cabinet will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 6(1)(b)3 of 401 KAR 31:010 under the provisions of Section 6(2) and (3) of 401 KAR 31:010 rather than under the provisions of 401 KAR 36:060 (spent lead-acid batteries being reclaimed).

(1) If a generator is accumulating the waste, the cabinet will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of 401 KAR 32:010, 32:030, 32:040, and 32:050. The notice will become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the cabinet will hold a public hearing. The cabinet will provide notice of the hearing to the public and allow public participation at the hearing. The cabinet will issue a determination after the hearing stating whether or not compliance with 401 KAR Chapter 32 is required. The order becomes effective thirty (30) days after service of the determination unless the cabinet specifies a later date.

(2) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of 401 KAR Chapter 38. The owner or operator of the facility must apply for a permit within no more than six (6) months of notice. If

the owner or operator of the facility wishes to challenge the cabinet's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the cabinet's determination. The question of whether the cabinet's decision was proper will remain open for consideration during the public comment period discussed under Section 8 of 401 KAR 38:050 and in any subsequent hearing.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 32:010. General provisions for generators.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994 [224.835, 224.864]
PURSUANT TO: KRS Chapter 13A [224.017], 224.033, 224.864
NECESSITY AND FUNCTION: KRS 224.864 requires the Natural Resources and Environmental Protection Cabinet to promgulate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards for the generators of hazardous waste. This regulations establishes the applicable general provisions for generators.

Section 1. Purpose, Scope, and Applicability. (1) These regulations establish standards for generators of hazardous waste.

(2) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this regulation with respect to that waste; Section 2 of this regulation for determining whether or not he has a hazardous waste, Section 3 of this regulation for obtaining an identification number; 401 KAR 32:030, Section 5, for accumulation of hazardous waste; 401 KAR 32:040, Section 1(3) and (4), for recordkeeping; 401 KAR 32:040, Section 4, for additional reporting; and, if applicable, 401 KAR 32:050, Section 2, for farmers.

(3) Any person who imports hazardous waste from outside the United States into Kentucky must comply with the standards applicable to generators established in this chapter.

(4) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of 401 KAR 32:050, Section 2 is not required to comply with other standards in this chapter or 401 KAR Chapters 34, 35, and 38[, or 401 KAR 35:010] with respect to such pesticides.

(5) A person who generates a hazardous waste as defined by 401 KAR Chapter 31 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this chapter.

(6) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this chapter.

(7) A small quantity generator (i.e., one who generates between 100 and 1,000 kg/mo of hazardous waste) must comply with the generator standards established in this chapter.

Section 2. Hazardous Waste Determination. A person who generates a waste, as defined in 401 KAR 31:010, Section 2, must determine if that waste is a hazardous waste using the following method:

(1) He should first determine if the waste is excluded from regulation under 401 KAR 31:010, Section 4.

(2) He must then determine if the waste is listed as a hazardous waste in 401 KAR 31:040.

(3) If the waste is not listed as a hazardous waste in 401 KAR 31:040 he must determine whether the waste is identified in 401 KAR 31:030, by either:

(a) Testing the waste according to the methods set forth in 401 KAR 31:030, or according to an equivalent method approved by the secretary [(see Section 1(3) of 401 KAR 31:040)]; or

(b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

Section 3. Registration and Identification Number. (1) A generator must not treat, store, dispose [of], transport, or offer for transportation, hazardous waste without having registered with the cabinet and received an EPA identification number. Such registration shall be filed within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as a hazardous waste. Not more than one (1) such registration shall be required to be filed with respect to the same substance. The registration shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually;

(b) The place of generation and the name and address of a contact agent; and

(c) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31, file a report, according to procedures previously approved by the cabinet, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(2) A generator who has not received an EPA identification number may obtain one by registering with the cabinet as described above, using forms provided by the cabinet. Upon receiving the request and reviewing the information the cabinet will assign an EPA identification number to the generator.

(3) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4) If a registrant requires a modification to his registration to add an additional waste stream, or change the name of the company or the

contact person, he must submit a fee to the cabinet in accordance with Section 3 of 401 KAR 39:010.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 32:030. Pre-transport requirements.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994 [224.835, 224.864]
PURSUANT TO: KRS Chapter 13A, [224.017,] 224.033, 224.864
NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promgulate regulations to establish standards for the generation of hazardous waste. The chapter establishes standards applicable to generators of hazardous waste. This regulation establishes the requirements for labeling, marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable U.S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179.

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172.

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 CFR 172.

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304. The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
Generator's Name and Address_____.
Manifest Document Number_____."

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

Section 5. Accumulation Time. (1) Except as subsection 4 of this section provides otherwise, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status provided that:

(a) The waste is placed in containers which meet the standards of Section 1 of this regulation and are managed in accordance with 401 KAR 35:180, or in tanks, provided the generator complies with the requirements of 401 KAR 35:190, except those provisions in Section 3 of 401 KAR 35:190;

(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(c) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

(d) The generator complies with the requirements specified in 401 KAR 35:030, and 401 KAR 35:040, and Sections 6 and 7 of 401 KAR 35:020.

(2) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of 401 KAR Chapter 34, 401 KAR Chapter 35 and the permit requirements of 401 KAR Chapter 38, unless he has been granted an extension to the ninety (90) day period. Such extensions may be granted by the cabinet if hazardous wastes must remain on-site for longer than ninety (90) days due to unforeseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3)(a) A generator may accumulate as much as fifty-five (55) gallons of hazardous waste or one (1) quart of acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (1) of this section provided that upon commencement of accumulation, he:

1. Complies with Sections 2, 3, and 4(1) of 401 KAR 35:180; and

2. Marks his containers with the words "Hazardous Waste."

(b) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in excess of the amounts listed in paragraph (a) of this subsection at or near any point of generation must, with respect to that amount of excess waste, comply with subsection (1) of this section or other applicable provisions of this chapter and continue to comply with paragraph (a)1 and 2 of this subsection. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating. The date must be placed on the container on the day that excess accumulation began.

(4) A generator generating a total quantity of hazardous waste greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (i.e., a registered small quantity generator), may store without a permit for up to 180 days. Such on-site storage may occur without a permit for not more than 6,000 kilograms for up to 270 days

if such generator must ship or haul such waste over 200 miles.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 34:200. Surface impoundments.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994 [224.835, 224.842, 224.855, 224.860, 224.866]
PURSUANT TO: KRS Chapter 13A, 224.033, [224.862,] 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes minimum standards for surface impoundments.

Section 1. Applicability. This regulation applies to owners and operators of hazardous waste sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Design and Operating Requirements. (1)[(a)] Any [A] surface impoundment that is not covered by subsection (3) of this section or Section 1 of 401 KAR 35:200 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). After November 8, 1988 [1985], a surface impoundment shall not receive, store or treat hazardous waste unless such surface impoundment is in compliance with subsection (3) of this section. [(except for an existing portion of a surface impoundment which meets the requirements of paragraph (b) of this subsection) must have a] The liner must be [that is] designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with Section 6(1)(a) of this regulation. For impoundments that will be closed in accordance with Section 6(1)(b) of this regulation, the liner must be constructed of materials that can [will] prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(a) [1.] Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, geological conditions including, where applicable, karst features, the stress of installation, and the stress of daily operation;

(b) [2.] Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, uplift or geological conditions including, where applicable, karst features. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1×10^{7} cm permeability; and

(c) [3.] Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

[(b) Existing unlined surface impoundments must have flow measuring devices at the inlet and outlet points of the impoundments. These devices must measure and continuously record the inflow and outflow for continuous flow conditions. However manual measurement and recording can be done for intermittent and manually operated inlet and outlet conditions.]

(2) The owner or operator will be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the cabinet will consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(3) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit must install two (2) or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two (2) or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding

sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a three (3) foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeters per second.

(4) Subsection (3) of this section will not apply if the owner or operator demonstrates to the cabinet, and the cabinet finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(5) The double liner requirement set forth in subsection (3) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in Section 5 of 401 KAR 31:030; and

(b)1.a. The monofill has at least one (1) liner for which there is no evidence that such liner is leaking. For the purposes of this subsection the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (3) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action;

b. The monofill is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

c. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under KRS 224.855 and KRS 224.866; or

2. The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(6) [(3)] A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(7) [(4)] A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In insuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(8) [(5)] A new surface impoundment shall not be constructed in a floodway in accordance with 401 KAR 34:020, Section 9(2).

(9) [(6)] A surface impoundment (including its underlying liners) for the treatment or storage of hazardous waste must be protected from inundation by waters of the 100-year flood in accordance with 401 KAR 34:020, Section 9(2).

(10) [(7)] New surface impoundments for the disposal of hazardous waste must be located entirely above the seasonal highwater table, in accordance with 401 KAR 34:020, Section 9(2).

(11) [(8)] The cabinet will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Double-lined Surface Impoundments. [Exemption from] 401 KAR 34:060 Ground water protection requirements apply to all surface impoundments including those with double-liner systems. [(1) The owner or operator of a double-lined surface impoundment is not subject to regulation under 401 KAR 34:060 of this chapter if the following conditions are met:]

[(a) The impoundment (including its underlying liners) must be located entirely above the seasonal high water table.]

[(b) The impoundment must be underlain by two (2) liners which are designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of Section 2 of this regulation.]

[(c) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquids into the space between the liners.]

[(2) If liquid leaks into the leak detection system, the owner or operator must:]

[(a) Notify the cabinet of the leak in writing within seven (7) days after detecting the leak; and]

[(b) Within a period of time specified in the permit:]

[1. Remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer registered in Kentucky that, to the best of his knowledge and opinion, the leak has been stopped; or]

[2. If a detection monitoring program pursuant to Section 9 of 401 KAR 34:060 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of 401 KAR 34:060 within the period of time specified in the permit.]

[(3) The cabinet will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.]

Section 4. Monitoring and Inspection. (1) During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from Section 2 of this regulation) and cover systems (e.g.,

membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(b) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(2) While a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of overtopping control systems;

(b) Sudden drops in the level of the impoundment's contents as computed by the water balance calculations required in 401 KAR 34:050 and as observed by flow measuring devices etc.; and

[(c) The presence of liquids in leak detection systems, where installed to comply with Section 3 of this regulation; and]

(c) [(d)] Severe erosion or any other signs of deterioration in dikes or other containment devices.

(3) Prior to the issuance of a permit, and after any extended period of time (at least six (6) months) during which the impoundment was not in service, the owner or operator must obtain a certification from a qualified engineer registered in Kentucky that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:

(a) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(b) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

Section 5. Emergency Repairs; Contingency Plans. (1) A surface impoundment must be removed from service in accordance with subsection (2) of this section when:

(a) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(b) The dike leaks.

(2) When a surface impoundment must be removed from service as required by subsection (1) of this section, the owner or operator must:

(a) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(b) Immediately contain any surface leakage which has occurred or is occurring;

(c) Immediately stop the leak;

(d) Take any other necessary steps to stop or prevent catastrophic failure;

(e) If a leak cannot be stopped by any other means, empty the impoundment; and

(f) Notify the cabinet of the problem in writing within seven (7) days after detecting the problem.

(3) As part of the contingency plan required in 401 KAR 34:040 the owner or operator must specify a procedure for complying with the requirements of this section.

(4) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(a) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be recertified in accordance with Section 4(3) of this regulation.

(b) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

1. For any existing portion of the impoundment, a liner must be installed in compliance with Section 2 [or 3] of this regulation; and

2. For any other portion of the impoundment, the repaired liner system must be certified by a qualified engineer as meeting the design specifications approved in the permit.

3. Determine, using water balance calculations in accordance with 401 KAR 34:050, how much liquid was lost, where the liquid went and take appropriate actions.

(5) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired within six (6) months time, as specified by the cabinet, must be closed in accordance with the provisions of Section 6 of this regulation.

Section 6. Closure and Post-Closure Care. (1) At closure, the owner or operator must:

(a) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3 of 401 KAR 31:010 applies; or

(b) Treat in such a manner so as to:

1. Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

3. Cover the surface impoundment with a final cover designed and constructed to:

a. Provide long-term minimization of the migration of liquids through the closed impoundment;

b. Function with minimum maintenance;

c. Promote drainage and minimize erosion or abrasion of the final cover;

d. Accommodate settling and subsidence so that the cover's integrity is maintained; and

e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(2) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in Sections 7 through 10 of 401 KAR 34:070, including maintenance and monitoring throughout the post-closure care period (specified in the permit under Section 8 of 401 KAR 34:070). The owner or operator must:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of

settling, subsidence, erosion, or other events;

[(b) Maintain and monitor the leak detection system in accordance with Section 3 of this regulation, where such a system is present between double liner systems;]

(b) [(c)] Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of 401 KAR 34:060; and

(c) [(d)] Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(3)(a) If an owner or operator plans to close a surface impoundment in accordance with subsection (1)(a) of this section, and the impoundment does not comply with the liner requirements of Section 2(1) [1] and is not exempt from them in accordance with Section 2(2) of this regulation, then:

1. The closure plan for the impoundment under Section 3 of 401 KAR 34:070 must include both a plan for complying with subsection (1)(a) of this section and a contingent plan for complying with subsection (1)(b) of this section, which is also in compliance with 401 KAR 38:500 and KRS 224.855(3), in case not all contaminated subsoils can be practicably removed at closure; and

2. The owner or operator must prepare a contingent post-closure plan under Section 8 of 401 KAR 34:070 for complying with subsection (2) of this section, which is also in compliance with 401 KAR 38:500 and KRS 224.855(3), in case not all contaminated subsoils can be practicably removed at closure.

(b) The cost estimates calculated under Section 1 of 401 KAR 34:090 and Section 1 of 401 KAR 34:100 for closure and post-closure care of an impoundment subject to this paragraph must include separate analyses of the cost of complying with the contingent closure plan and the contingent post-closure plan in addition to the cost of expected closure under subsection (1)(a) of this section.

[(4) During the post-closure care period, if liquids leak into a leak detection system installed under Section 3 of this regulation, the owner or operator must notify the cabinet of the leak in writing within seven (7) days after detecting the leak. The cabinet will modify the permit to require compliance with the requirements of 401 KAR 34:060.]

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(1) The waste is treated, rendered, or mixed before placement in the impoundment so that:

(a) The resulting waste or mixture no longer meets the definition of ignitable or reactive waste under 401 KAR Chapter 31;and

(b) Section 8 of 401 KAR 34:020 is complied with; or

(2) The surface impoundment is used solely for emergencies.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials (see 401 KAR 34:330 for examples) must not be placed in the same surface impoundment.

Section 9. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous wastes F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) must not be placed in surface impoundments unless the owner or operator operates the surface impoundments in accordance with a management plan for these wastes that is approved by the secretary pursuant to the standards set out in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials co-disposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring techniques.

(2) The secretary may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 34:230. Landfills.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994 [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS Chapter 13A, 224,033, [224.862,] 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This regulation establishes the minimum standards for hazardous waste landfills.

Section 1. Applicability. This regulation applies to owners and operators of facilities that dispose of hazardous waste in landfills, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Design and Operating Requirements. (1) Any [A] landfill that is not covered by subsection (3) of this section or Section 10(1) [2] of 401 KAR 35:230 must have a liner system for all portions of the landfill (except for [that those] portions in existence prior to November 8, 1984 [are not required to retrofit with the liner system specified in

paragraph (a) of this subsection]). The liner system [(except for an existing portion of a landfill)] must have:

(a) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at anytime during the active live (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

1. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

2. Placed upon a foundation or base capable of providing support to the liner and resistant to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1×10^{-7} cm/sec permeability; and

3. Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(b) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The cabinet will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (approximately one (1) foot). The leachate collection and removal system must be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

2. Designed and operated to function without clogging through the scheduled closure of the landfill.

(2) The owner or operator will be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the cabinet will consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(3) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two (2) or more liners and a leachate collection system above and between liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two (2) or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a three (3) foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(4) Subsection (3) of this section will not apply if the owner or operator demonstrates to the cabinet, and the cabinet finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(5) The double liner requirement set forth in subsection (3) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in Section 5 of 401 KAR 31:030; and

(b)1.a. The monofill has at least one (1) liner for which there is no evidence that such liner is leaking;

b. The monofill is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

c. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under KRS 224.855 and 224.866; or

2. The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(6) [(3)] The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five (25) year storm.

(7) [(4)] The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(8) [(5)] Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(9) [(6)] If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(10) [(7)] A new landfill shall not be constructed in a floodway, the 100-year floodplain or in an area of seasonal high water table in accordance with Section 9(2) of 401 KAR 34:020.

(11) [(8)] Existing landfills within the 100-year floodplain shall be protected from inundation by waters of the 100-year flood in accordance with Section 9(2) of 401 KAR 34:020.

(12) [(9)] The cabinet will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Double-Lined Landfills: [Exemption from] Groundwater Protection Requirements. [(1)] The owner or operator of a double-lined landfill is [not] subject to the requirements of 401 KAR 34:060. [if the following conditions are met:]

[(a) The landfill (including its underlying liners) must be located entirely above the seasonal high water table.]

[(b) The landfill must be underlain by two (2) liners which are designed and constructed in a manner to prevent the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of Section 2(1)(a) of this regulation.]

[(c) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquid into the space between the liners.]

[(d) The landfill must have a leachate collection and removal system above the top liner that is designed, constructed, maintained, and operated in accordance with Section 2(1)(b) of this regulation.]

[(2) If liquid leaks into the leak detection system, the owner or operator must:]

[(a) Notify the cabinet of the leak in writing within seven (7) days after detecting the leak; and]

[(b)1. Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer registered in Kentucky that, to the best of his knowledge and opinion, the leak has been stopped; or]

[2. If a detection monitoring program pursuant to Section 9 of 401 KAR 34:060 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of 401 KAR 34:060 within a period of time specified in the permit.]

[(3) The cabinet will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.]

Section 4. Monitoring and Inspection. (1) During construction or installation, liners (except in the case of existing portions of landfills exempt from Section 2(1) of this regulation) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(b) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(2) While a landfill is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

[(b) The presence of liquids in leak detection systems, where installed to comply with Section 3 of this regulation;]

(b) [(c)] Proper functioning of wind dispersal control systems, where present; and

(c) [(d)] The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

Section 5. Surveying and Recordkeeping. The owner or operator of a landfill must maintain the following items in the operating record required under Section 4 of 401 KAR 34:050:

(1) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks;

(2) The contents of each cell and the approximate location of each hazardous waste type within each cell; and

(3) Any other information specified by the cabinet in the permit.

Section 6. Closure and Post-Closure Care. (1) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(a) Provide long-term minimization of migration of liquids through the closed landfill;

(b) Function with minimum maintenance;

(c) Promote drainage and minimize erosion or abrasion of the cover;

(d) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(e) Have a permeability less than or equal to 1×10^{-7} centimeters per second [the permeability of any bottom liner system or natural subsoils present].

(2) After final closure, the owner or operator must comply with all post-closure requirements contained in Sections 7 through 10 of 401 KAR 34:070, including maintenance and monitoring throughout the post-closure care period (specified in the permit under Section 7 of 401 KAR 34:070). The owner or operator must:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

[(b) Maintain and monitor the leak detection system in accordance with Section 3 of this regulation, where such a system is present between double liner systems;]

(b) [(c)] Continue to operate the leachate collection and removal system until leachate is no longer detected;

(c) [(d)] Maintain and monitor the groundwater monitoring system and comply with all other

applicable requirements of this regulation;

(d) [(e)] Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(e) [(f)] Protect and maintain surveyed benchmarks used in complying with Section 5 of this regulation.

(3) In the closure and post-closure plans, the owner or operator must address the following objectives and indicate how they will be achieved: [During the post-closure care period, if liquid leaks into a leak detection system installed under Section 3 of this regulation, the owner or operator must notify the cabinet of the leak in writing within seven (7) days after detecting the leak. The cabinet will modify the permit to require compliance with the requirements of this regulation.]

(a) Control of pollutant migration from the facility via ground water, surface water and air;

(b) Control of surface water infiltration, including prevention of pooling; and

(c) Prevention of erosion.

(4) the owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of subsection (3) of this section.

(a) Type and amount of hazardous waste and hazardous waste constituents in the landfill;

(b) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(c) Site location, topography and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water, and drinking water sources);

(d) Climate, including amount, frequency and pH of precipitation;

(e) Characteristics of the cover including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope and type of vegetation on the cover; and

(f) Geological and soil profiles, and surface and subsurface hydrology of the site.

(5) In addition to the requirements of Section 7 of 401 KAR 34:070, during the post-closure care period, the owner or operator of a hazardous waste landfill must:

(a) Maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases; and

(b) Restrict access to the landfill as appropriate for its post-closure use.

Section 7. Special Requirements for Ignitable or Reactive Waste. Except as provided in subsection (2) of this section, and in Section 11 of this regulation, ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before placement in a landfill so that:

(1) The resulting waste or mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(2) Section 8 of 401 KAR 34:020 is complied with.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials, (see 401 KAR 34:330 for examples) must not be placed in the same landfill cell.

Section 9. Special Requirements for Bulk and Containerized Liquids [Waste]. (1) Bulk or non-containerized liquid waste or waste containing free liquids must not be placed in a landfill [unless before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with an absorbent solid), so that free liquids are no longer present].

(2) After May 8, 1985, liquid waste or waste containing free liquids which is mixed with an absorbent solid may not be placed in landfills.

(3) [(2)] Containers holding free liquids must not be placed in a landfill unless:

(a) All free-standing liquid:

1. Has been removed by decanting, or other methods; or

[2. Has been mixed with absorbent or solidified so that free-standing liquid is no longer observed; or]

2. [3.] Has been otherwise eliminated; or

(b) The container is very small, such as an ampule; or

(c) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(d) The container is a lab pack as defined in Section 11 of this regulation and is disposed of in accordance with Section 11 of this regulation.

(4) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquid Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," (EPA Publication No. SW-846) which is incorporated by reference in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Containers. Unless they are very small, such as an ampule, containers must be either:

(1) At least ninety (90) percent full when placed in the landfill; or

(2) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

Section 11. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs). Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(1) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179), if those regulations specify a particular inside container for the waste.

(2) The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (approximately 110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and absorbent material.

(3) The absorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with Section 8(2) of 401 KAR 34:020.

(4) Incompatible wastes, as defined in 401 KAR 30:010, must not be placed in the same outside container.

(5) Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in Section 4 of 401 KAR 31:030 must be treated or rendered non-reactive prior to packaging in accordance with subsections (1) through (4) of this section. Cyanide- and sulfide-bearing reactive waste may be packed in accordance with subsections (1) through (4) of this section upon approval of the cabinet without first being treated or rendered non-reactive.

Section 12. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) must not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the cabinet pursuant to the standards set out in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials co-disposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring requirements.

(2) The cabinet may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 34:240. Incinerators.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994 [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS Chapter 13A, 224.033, [224.862,] 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities except as 401 KAR Chapter 35 applies. This regulation establishes minimum standards for incinerators.

Section 1. Applicability. (1) This regulation applies to owners or [and] operators of hazardous waste sites or facilities that incinerate hazardous waste, except as Section 1 of 401 KAR 34:010 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(a) Owners or operators of hazardous waste incinerators (as defined in 401 KAR 30:010); and

(b) Owners or operators who burn hazardous wastes in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation [the wastes].

(2) After consideration of the waste analysis included with Part B of the permit application, the cabinet, in establishing the permit conditions, may exempt the applicant from all requirements of this regulation except Sections 2 and 8:

(a) If the cabinet finds that the waste to be burned is:

1. Listed as a hazardous waste in 401 KAR 31:040 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

2. Listed as a hazardous waste in 401 KAR 31:040 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; or

3. A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under 401 KAR 31:030; or

4. A hazardous waste solely because it possesses any of the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), and (h) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; and

(b) If the waste analysis shows that the waste contains none of the hazardous constituents listed in 401 KAR 31:170, which would reasonably be expected to be in the waste.

(3) If the waste to be burned is one which is described by subparagraphs (2)(a) 1, 2, 3, or 4 of this section and contains insignificant concentrations of the hazardous constituents listed in 401 KAR 31:170, then the cabinet may, but is not required to in establishing the permit conditions, exempt the applicant from all requirements of this regulation except Section 2 and 8 of this regulation, after consideration of the waste analysis included with Part B of the permit application, unless the cabinet finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(4) The owner or operator of an incinerator may conduct trial burns, subject only to the requirements of Section 3 of 401 KAR 38:060.

Section 2. Waste Analysis. (1) As a portion of

a trial burn plan required by Section 3 of 401 KAR 38:060 or with Part B of his permit application, the owner or operator must have included an analysis of his waste feed sufficient to provide all information required by 401 KAR 38:060 or 401 KAR 38:090. Owners or operators of new hazardous waste incinerators must provide the information required by Section 3(2) of 401 KAR 38:060 and 401 KAR 38:090. If an owner or operator demonstrates to the satisfaction of the cabinet that any information required in 401 KAR 38:060 or 401 KAR 38:090 cannot reasonably be attained, the cabinet may waive the requirement to submit the information in accordance with Section 2 of 401 KAR 30:020.

(2) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit under Section 6(2) of this regulation.

Section 3. Principal Organic Hazardous Constituents (POHCs). (1) Principal organic hazardous constituents (POHCs) in the waste feed must be treated to the extent required by the performance standards of Section 4 of this regulation.

(2) (a) One (1) or more POHCs will be specified in the facility's permit from among those constituents listed in 401 KAR 31:170, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(b) Trial POHCs will be designated for performance of trial burns in accordance with the procedures specified in 401 KAR 38:060, for obtaining trial burn permits.

Section 4. Performance Standards. An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 6 of this regulation, it will meet the following performance standards:

(1)(a) Except as provided in paragraph (b) of this subsection, an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of ninety-nine and ninety-nine hundredths (99.99) percent for each principal organic hazardous constituent (POHC) designated (under Section 3 of this regulation) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in}-W_{out}) \times 100\%}{W_{in}}$$

Where: W_{in}= Mass feed rate of one (1) principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator; and

W_{out}= Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(b) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 (chlorinated dioxins, chlorinated dibenzofurans, chlorinated phenols) must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under Section 3 of this regulation) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in paragraph (a) of this subsection. In addition, the owner or operator of the incinerator must notify the secretary of his intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour (four (4) pounds per hour) of hydrogen chloride (HCl) must control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one (1) percent of the HCl in the stack gas prior to entering any pollution control equipment.

(3) An incinerator burning hazardous waste must not emit particulate matter exceeding 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times \frac{14}{21-Y}$$

When P_c is the corrected concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in 401 KAR 59:020, "new incinerators." This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities the cabinet will select an appropriate correction procedure to be specified in the facility permit.

(4) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 6 of this regulation) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 5. Hazardous Waste Incinerator Permits. (1) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under Section 6 of this regulation except:

(a) In approved trial burns under 401 KAR 38:060, Section 3; or

(b) Under exemptions created by Section 1 of this regulation.

(2) Other hazardous wastes may be burned only after operating conditions have been specified

in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under 401 KAR 38:090.

(3) The permit for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of this regulation, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of Section 6 of this regulation, sufficient to comply with the following standards:

(a) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in paragraph (b) of this subsection, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 4 of this regulation, based on the cabinet's engineering judgment. The cabinet may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(b) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the performance standards of Section 4 of this regulation and must be in accordance with the approved trial burn plan;

(c) For the period immediately following completion of the trial burn and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant and review of the trial burn results and modification of the facility permit by the cabinet, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 4 of this regulation based on the cabinet's engineering judgment.

(d) For the remaining duration of the permit, the operating requirements must be those demonstrated, in a trial burn or by alternative data specified in Section 2(3) of 401 KAR 38:190, as sufficient to ensure compliance with the performance standards of Section 4 of this regulation.

Section 6. Operating Requirements. (1) An incinerator must be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in Section 5(2) of this regulation and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards for Section 4 of this regulation.

(2) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed) which will not affect compliance with the performance standards of Section 4 of this regulation to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(a) Carbon monoxide (CO) level in the stack exhaust gas;

(b) Waste feed rate;

(c) Combustion temperature;

(d) An appropriate indicator of combustion gas velocity as specified by the cabinet;

(e) Allowable variations in incinerator system design or operating procedures; and

(f) Such other operating requirements as are necessary to ensure that the performance standards of Section 4 of this regulation are met.

(3) During start-up and shut-down of an incinerator, hazardous waste (except ignitable waste exempted in accordance with Section 1 of this regulation) must not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

(4) Fugitive emissions from the combustion zone must be controlled by:

(a) Keeping the combustion zone totally sealed against fugitive emissions; or

(b) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(c) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(5) An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under subsection (1) of this section.

(6) An incinerator must cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

Section 7. Monitoring and Inspections. (1) The owner or operator must conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(a) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit must be monitored on a continuous basis.

(b) CO must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(c) Upon request by the cabinet, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards of Section 4 of this regulation.

(2) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be subjected to thorough visual inspection at least daily, for leaks, spills, and fugitive emissions, and signs of tampering.

(3) The emergency waste feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless the applicant demonstrates to the cabinet that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing must be conducted at least monthly.

(4) This monitoring and inspection data must be recorded and the records must be placed in the operating log required by Section 4 of 401

KAR 34:050.

Section 8. Closure. At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 35:240. Incinerators (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994
PURSUANT TO: KRS Chapter 13A, [224.017,] 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes minimum standards for incinerators.

Section 1. Applicability. (1) The requirements in this regulation apply to owners and operators of sites or facilities that incinerate [treat] hazardous waste [in incinerators], except as Section 1 of 401 KAR 35:010 [and subsection (2) of this section] provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(a) Owners or operators of hazardous waste incinerators as defined in 401 KAR 30:010; and

(b) Owners or operators who burn hazardous wastes in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation [the wastes].

(2) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this regulation, except Section 5 of this regulation, provided that the owner or operator has documented, in writing that the waste would not reasonably be expected to contain any of the hazardous constituents listed in 401 KAR 31:170, and such documentation is retained at the facility, if the waste to be burned is:

(a) Listed as a hazardous waste in 401 KAR 31:040 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(b) Listed as a hazardous waste in 401 KAR 31:040 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; or

(c) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under 401 KAR 31:030; or

(d) A hazardous waste solely because it possesses the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), or (h) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone.

Section 2. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, the owner or operator must sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be omitted. At a minimum, the analysis must determine:

(1) Heating value of the waste;

(2) Halogen content and sulfur content in the waste; and

(3) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

Section 3. General Operating Requirements. During start-up and shut-down of an incinerator, the owner or operator must not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and air flow.

Section 4. Monitoring and Inspections. The owner or operator must conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(1) Existing instruments which relate to combustion and emission control must be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH and relevant level controls.

(2) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

Section 5. Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

Section 6. Interim Status Incinerators Burning Particular Hazardous Wastes. (1) Owners or operators of incinerators subject to this regulation may burn EPA Hazardous Wastes Numbers F020, F021, F023, F026, or F027 (chlorinated dioxins, dibenzofurans, and phenols) if they receive a certification from the cabinet that they can meet the performance standards of 401 KAR 34:240 when they burn these wastes.

(2) The following standards and procedures

will be used in determining whether to certify an incinerator:

(a) The owner or operator will submit an application to the cabinet containing applicable information in 401 KAR 38:190 and Section 3 of 401 KAR 38:060 demonstrating that the incinerator can meet the performance standards in 401 KAR 34:240 when they burn these wastes.

(b) The cabinet will issue a tentative decision as to whether the incinerator can meet the performance standards in 401 KAR 34:240. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The cabinet will accept comment on the tentative decision for sixty (60) days. The cabinet also may hold a public hearing upon request or at the cabinet's [his] discretion.

(c) After the close of the public comment period, the director will issue a decision whether or not to certify the incinerator.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 36:040. Hazardous waste burned for energy recovery and used oil burned for energy recovery.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in recycling of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste recycling facilities. This chapter establishes minimum standards for hazardous waste recycling facilities. This regulation establishes minimum standards for hazardous waste burned for energy recovery.

Section 1. Applicability of Standards for Hazardous Waste Burned for Energy Recovery. (1) The requirements in Sections 1 through 6 of this regulation apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under 401 KAR 34:240 or 401 KAR 35:240, except as provided by subsection (2) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel." [However, hazardous waste] Fuel produced from hazardous waste by processing, blending or other treatment is also hazardous waste fuel. (This regulation does not apply, however, to gas recovered from hazardous waste management activities when such gas is burned for energy recovery.) [by a person who neither generated the waste nor burns the fuel are not subject to regulation at the present time.]

(2) The following hazardous wastes are not regulated under the provisions of Sections 1 through 6 of this regulation:

(a) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 401 KAR Chapter 31. Such used oil is subject to regulation under Sections 7 through 11 of this regulation rather than Sections 1 through 6 of this regulation; and

(b) Hazardous wastes that are exempt from regulation under the provisions of Section 4 of 401 KAR 31:010 and Section 6(1)(c)5 through 9 of 401 KAR 31:010, and hazardous wastes that are subject to the special requirements for limited [small] quantity generators under the provisions of Section 5 of 401 KAR 31:010.

Section 2. Prohibitions for Hazardous Waste Burned for Energy Recovery. (1) A person may market hazardous waste fuel only: [Except as provided in subsection (2) of this section, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics) unless such kiln fully complies with regulations that are applicable to incinerators.]

(a) To persons who have notified the cabinet of their hazardous waste fuel activities in accordance with Section 2 of 401 KAR 34:020 and have a U.S. EPA identification number; and

(b) If the fuel is burned, to persons who burn the fuel in boilers or industrial furnaces identified in subsection (2) of this section.

(2) Hazardous waste fuel may be burned for energy recovery in only the following devices: [This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one (1) or more of the characteristics of hazardous waste in 401 KAR Chapter 31.]

(a) Industrial furnaces identified in 401 KAR 30:010;

(b) Boilers, as defined in 401 KAR 30:010, that are identified as follows:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

2. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

(3) No fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics) unless such kiln fully complies with regulations that are applicable to incinerators.

Section 3. Standards Applicable to Generators of Hazardous Waste Fuel. (1) Generators of hazardous waste that is used as fuel or used to produce a fuel are subject to the requirements of 401 KAR Chapter 32 [except that Section 7 of this regulation exempts certain spent materials and by-products from these provisions];

(2 Generators who [are] market[ers] hazardous waste fuel to a burner also are subject to [must comply with] Section 5 of this regulation; and

(3 Generators who are burners also are subject to [must comply with] Section 6 of this regulation.

Section 4. Standards Applicable to Transporters of Hazardous Waste Fuel. [(1)] Transporters of hazardous waste fuel (and hazardous waste that is used to produce a fuel) [from a generator to a marketer, or from a generator to a burner] are subject to the requirements of 401 KAR Chapter 33[, except that Section 7 of this regulation exempts certain spent materials and by-products from these provisions].

[(2) Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous waste fuel from marketers, who are not also the generators of the waste, to burners or other marketers.]

Section 5. Standards Applicable to Marketers of Hazardous Waste Fuel. Persons who market hazardous waste fuel are termed [called] "marketers" and are subject to the requirements of this section. Marketers include generators who market hazardous waste fuel directly to a burner, [and] persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes and persons who distribute but do not process a blend hazardous waste fuel. [Persons who distribute but do not process or blend hazardous waste fuel are also marketers, but are not presently subject to regulation. Marketers (other than distributors) are subject to the following requirements:]

(1) Prohibitions. The [There are currently no] prohibitions under Section 2 of this regulation shall apply [relating to marketers of hazardous waste fuel].

(2) Notification. Notification requirements under Section 2 of 401 KAR 34:020 shall be followed for hazardous waste fuel activities. Even if a marketer has previously notified the cabinet of his hazardous waste management activities and obtained a U.S. EPA identification number, he must renotify to identify his hazardous waste fuel activities.

(3) Storage. The applicable provisions of

[(a) Marketers who are generators are subject to the requirements of] Section 5 of 401 KAR 32:030, 401 KAR 34:010 through 401 KAR 34:210, 401 KAR 35:010 through 401 KAR 35:210, and 401 KAR Chapter 38 shall apply for storage. [, except as provided by Section 7 of this regulation for certain spent materials and by-products; and]

[(b) Marketers who received hazardous wastes from generators, and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of 401 KAR 34:010 through 34:210, 401 KAR 35:010 through 35:210, and 401 KAR Chapter 38, except as provided by Section 7 of this regulation for certain spent materials and by-products.]

[(3) Labeling.]

[(a) Except as provided in paragraphs (b) through (d) of this subsection, after February 6, 1985, it shall be unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:]

[1. To bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTE;" and]

[2. To list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill of sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.]

[(b) This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if:]

[1. Such materials are generated and reinserted on-site into the refining process;]

[2. Contaminants are removed; and]

[3. Such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.]

[(c) This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices; if:]

[1. Contaminants are removed; and]

[2. Such oil materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.]

[(d) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one (1) or more of the characteristics of hazardous waste in 401 KAR Chapter 31.]

(4) Off-site shipment. The standards for generators in 401 KAR Chapter 32 shall apply when a marketer initiates a shipment of hazardous waste fuel.

(5) Required notices.

(a) Before a marketer initiates the first shipment of hazardous waste fuel to a burner or another marketer, he must obtain a one (1) time written and signed notice from the burner or marketer certifying that:

1. The burner or marketer has notified the cabinet in accordance with Section 2 of 401 KAR 34:020 and identified his waste-as-fuel activities; and

2. If the recipient is a burner, the burner will burn the hazardous waste fuel only in an industrial furnace or boiler identified in Section 2(2) of this regulation.

(b) Before a marketer accepts the first shipment of hazardous waste fuel from another marketer, he must provide the other marketer with a one (1) time written and signed certification that he has notified the cabinet in accordance with Section 2 of 401 KAR 34:020 and identified his hazardous waste fuel activities.

(6) Recordkeeping. In addition to the

applicable recordkeeping requirements of 401 KAR Chapters 32, 34, and 35, a marketer must keep a copy of each certification notice he receives or sends for three (3) years from the date he last engages in a hazardous waste fuel marketing transaction with the person who sends or receives the certification notice.

Section 6. Standards Applicable to Burners of Hazardous Waste Fuel. Owners and operators of industrial furnaces and boilers identified in Section 2(2) of this regulation that burn hazardous fuel are "burners" and are subject to the following requirements:

(1) Prohibitions. The prohibitions under Section 2(2) of this regulation shall apply. [Notification. Any person who burns hazardous waste fuels shall notify the cabinet in accordance with Section 2 of 401 KAR 34:020.]

(2) Notification. Notification requirements in accordance with Section 2 of 401 KAR 34:020 shall apply for hazardous waste fuel activities. Even if a burner has previously notified the cabinet of his hazardous waste management activities and obtained a U.S. EPA identification number, he must renotify to identify his hazardous waste fuel activities. [Burners that store hazardous waste fuel prior to burning are subject to the requirements of Section 5 of 401 KAR 32:030 or to all applicable requirements in 401 KAR 34:010 through 401 KAR 34:210, 401 KAR 35:010 through 401 KAR 35:210, and 401 KAR Chapter 38 with respect to such storage, except as provided by Section 7 of this regulation for certain spent materials and by-products.]

(3) Storage.

(a) For short term accumulation by generators who burn their hazardous waste fuel on site, the applicable provisions of Section 5 of 401 KAR 32:020 shall apply;

(b) For existing storage facilities, the applicable provisions of 401 KAR 35:010 through 35:210, and 401 KAR Chapter 38 shall apply; and

(c) For new storage facilities, the applicable provisions of 401 KAR 34:010 through 34:210, and 401 KAR Chapter 38 shall apply.

(4) Required notices. Before a burner accepts the first shipment of hazardous waste fuel from a marketer, he must provide the marketer with a one (1) time written and signed notice certifying that:

(a) He has notified the cabinet in accordance with Section 2 of 401 KAR 34:020 and identified his waste-as-fuel activities; and

(b) He will burn the fuel only in a boiler or furnace identified in Section 2(2) of this regulation.

(5) Recordkeeping. In addition to the applicable recordkeeping requirements of 401 KAR Chapters 34 and 35, a burner must keep a copy of each certification notice that he sends to a marketer for three (3) years from the date he last receives hazardous waste fuel from that marketer.

Section 7. Applicability of Standards for Used Oil Burned for Energy Recovery. [Conditional Exemption for Spent Materials and By-products Exhibiting a Characteristic of Hazardous Waste.] (1) The requirements in this section and Sections 8 through 11 of this regulation apply to used oil that is burned for energy recovery in any boiler or industrial furnace that is not regulated under 401 KAR 34:240 or 401 KAR 35:240, except as provided by subsections (3) and (5) of this section. Such used oil is termed "used oil fuel." Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. [Except as provided in subsection (2) of this section, hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste are not subject to the notification requirements of KRS 224.864, Section 2 of 401 KAR 33:010 and Section 2 of 34:020, or the generator, transporter, or storage requirements of 401 KAR Chapters 30 through 39.]

(2) "Used oil" means any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities. [This exemption does not apply when the spent material or by-product is stored in a surface impoundment prior to burning.]

(3) Except as provided by subsection (4) of this section,used oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under Sections 1 through 6 of this regulation. Used oil containing more than 1000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

(4) Used oil burned for energy recovery is subject to regulation under this section and Sections 8 through 11 of this regulation rather than as hazardous waste fuel under Sections 1 through 6 of this regulation if it is a hazardous waste solely because it:

(a) Exhibits a characteristic of hazardous waste identified in 401 KAR 31:030, provided that it is not mixed with a hazardous waste; or

(b) Contains hazardous waste generated only by a person subject to the special requirements for limited quantity generators under Section 5 of 401 KAR 31:010.

(5) Except as provided by subsection (3) of this section, used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this section and Sections 8 through 11 of this regulation unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Used oil fuel that meets the specification is subject only to the analysis and recordkeeping requirements under Section 11(2)(a) and (f) of this regulation. Used oil fuel that exceeds any specification level is termed "off-specification used oil fuel."

Table 1.

USED OIL EXCEEDING ANY SPECIFICATION LEVEL IS SUBJECT TO SECTIONS 7 THROUGH 11 OF THIS REGULATION WHEN BURNED FOR ENERGY RECOVERY[a]

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash Point	100°F minimum
Total halogens	4000 ppm maximum[b]

[a]The specification does not apply to used oil fuel mixed with a hazardous waste other than limited quantity generator hazardous waste.

[b]Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under subsection (3) of this section. Such used oil is subject to Section 1 through 6 of this regulation rather than Sections 7 through 11 of this regulation when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Section 8. Prohibitions for Used Oil Burned for Energy Recovery. (1) A person may market off-specification used oil for energy recovery only:

(a) To burners or other marketers who have notified the cabinet of their used oil management activities stating the location and general description of such activities, and who have an EPA identification number; and

(b) To burners who burn the used oil in an industrial furnace or boiler identified in subsection (2) of this section.

(2) Off-specification used oil may be burned for energy recovery in only the following devices:

(a) Industrial furnaces identified in 401 KAR 30:010; or

(b) Boilers, as defined in 401 KAR 30:010, that are identified as follows:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

2. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale; or

3. Used oil-fired space heaters provided that:

a. The heater burns only used oil that the owner or operator generates or used oil received from do-it-yourself oil changers who generated used oil as household waste;

b. The heater is designed to have a maximum capacity of not more than five-tenths (0.5) million Btu per hour; and

c. The combustion gases from the heater are vented to the ambient air.

Section 9. Standards Applicable to Generators of Used Oil Burned for Energy Recovery. (1) Except as provided in subsections (2) and (3) of this section, generators of used oil are not subject to Sections 7 through 11 of this regulation.

(2) Generators who market used oil directly to a burner are subject to Section 10 of this regulation.

(3) Generators who burn used oil are subject to Section 11 of this regulation.

Section 10. Standards Applicable to Marketers of Used Oil Burned for Energy Recovery. (1) Persons who market used oil fuel are termed "marketers." However, the following persons are not marketers subject to Sections 7 through 11 of this regulation:

(a) Used oil generators, and collectors who transport used oil received only from generators, unless the generator or collector markets the used oil directly to a person who burns it for energy recovery. However, persons who burn some used oil fuel for purposes of processing or other treatment to produce used oil fuel for marketing are considered to be burning incidentally to processing. Thus, generators and collectors who market to such incidental burners are not marketers subject to Sections 7 through 11 of this regulation;

(b) Persons who market only used oil fuel that meets the specification under Section 7(5) of this regulation and who are not the first person to claim the oil meets the specification (i.e., marketers who do not receive used oil from generators or initial transporters and marketers who neither receive nor market off-specification used oil fuel).

(2) Marketers are subject to the following requirements:

(a) Analysis of used oil fuel. Used oil fuel is subject to regulation under Sections 7 through 11 of this regulation unless the marketer obtains analyses or other information documenting that the used oil fuel meets the specifications provided under Section 7(5) of this regulation;

(b) Prohibitions. The prohibitions under Section 8(1) of this regulation shall apply;

(c) Notification. Notification to the cabinet stating the location and general description of used oil management activities is required. Even if a marketer has previously notified the cabinet of his hazardous waste management activities in accordance with Section 2 of 401 KAR 34:020 and obtained a U.S. EPA identification number, he must renotify to identify his used oil management activities.

(d) Invoice system. When a marketer initiates a shipment of off-specification used oil, he must prepare and send the receiving facility an invoice containing the following information:

1. An invoice number;

2. His own EPA identification number and the EPA identification number of the receiving facility;

3. The names and addresses of the shipping and receiving facilities;

4. The quantity of off-specification used oil to be delivered;

5. The date(s) of shipment or delivery; and

6. The following statement: "This used oil is subject to EPA regulation under 40 CFR Part 266 of Kentucky regulation under 401 KAR Chapter 36."

(e) Required notices.

1. Before a marketer initiates the first shipment of off-specification used oil to a burner or other marketer, he must obtain a one (1) time written and signed notice from the burner or marketer certifying that:

a. The burner or marketer has notified EPA stating the location and general description of his used oil management activities; and

b. If the recipient is a burner, the burner

will burn the off-specification used oil only in an industrial furnace or boiler identified in Section 8(2) of this regulation; and

2. Before a marketer accepts the first shipment of off-specification use oil from another marketer subject to the requirements of this section, he must provide the marketer with a one (1) time written and signed notice certifying that he has notified EPA of his used oil management activities; and

(f) Recordkeeping.

1. Used oil fuel that meets the specification. A marketer who first claims under subsection (2)(a) of this section that used oil fuel meets the specification must keep copies of analysis (or other information used to make the determination) of used oil for three (3) years. Such marketers must also record in an operating log and keep for three (3) years the following information on each shipment of used oil fuel that meets the specification. Such used oil fuel is not subject to further regulation, unless it is subsequently mixed with hazardous waste or unless it is mixed with used oil so that it no longer meets the specification.

a. The name and address of the facility receiving the shipment;

b. The quantity of used oil fuel delivered;

c. the date of shipment or delivery; and

d. A cross-reference to the record of used oil analysis (or other information used to make the determination that the oil meets the specification) required under subsection (2)(f)1 of this section.

2. Off-specification used oil fuel. A marketer who receives or initiates an invoice under the requirements of this section must keep a copy of each invoice for three (3) years from the date the invoice is received or prepared. In addition, a marketer must keep a copy of each certification notice that he receives or sends for three (3) years from the date he last engages in an off-specification used oil fuel marketing transaction with the person who sends or receives the certification notice.

Section 11. Standards Applicable to Burners of Used Oil Burned for Energy Recovery. Owners and operators of facilities that burn used oil fuel are "burners" and are subject to the following requirements:

(1) Prohibitions. The prohibitions under Section 8(2) of this regulation shall apply.

(2) Notification. Burners of off-specification used oil fuel must notify the cabinet stating the location and general description of used oil management activities, except that owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of Section 8(2)(b) of this regulation are exempt from these notification requirements. Even if a burner has previously notified the cabinet of his hazardous waste management activities in accordance with Section 2 of 401 KAR 34:020 and obtained a EPA identification number, he must renotify to identify his used oil management activities.

(3) Required notices. Before a burner accepts the first shipment of off-specification used oil from a marketer, he must obtain the marketer a one (1) time written and signed notice certifying that:

(a) He has notified the cabinet stating the location and general description of his used oil management activities; and

(b) He will burn the used oil only in an industrial furnace or boiler identified in Section 8(2) of this regulation; and

(4) Used oil fuel analysis.

(a) Used oil fuel burned by the generator is subject to regulation under Sections 7 through 11 of this regulation unless the burner obtains analysis (or other information) documenting that the used oil meets the specifications provided under Section 7(5) of this regulation.

(b) Burners who treat off-specification used oil fuel by processing, blending, or other treatment to meet the specification provided under Section 7(5) of this regulation must obtain analyses (or other information) documenting that the used oil meets the specifications.

(5) Recordkeeping A burner who receives an invoice under the requirements of this section must keep a copy of each invoice for three (3) years from the date the invoice is received. Burners must also keep for three (3) years copies of analyses of used oil fuel as may be required by subsection (4) of this section. In addition, he must keep a copy of each certification notice that he sends to a marketer for three (3) years from the date he last receives off-specification used oil from that marketer.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 38:050. Public information procedures.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994
PURSUANT TO: KRS Chapter 13A, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes standards on public information procedures and confidentiality.

Section 1. Application for a Permit. (1)(a) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the cabinet an application for each permit required under Section 1 of 401 KAR 38:010. Applications are not required for hazardous waste site or facility permits by rule (Section 1 of 401 KAR 38:060) or underground injections authorized by rule. However, for all facilities, including underground injection wells, which meet the definition of a disposal facility (see 401 KAR 30:010), compliance with the requirements of 401 KAR 38:500 (Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board), if applicable, must be demonstrated to the

cabinet prior to construction or operation under a permit by rule.

(b) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit (see Sections 1 through 6 of 401 KAR 38:070, 401 KAR 38:080 and the applicable requirements in 401 KAR 38:150 through 38:210).

(c) Permit applications must comply with the signature and certification requirements of Section 7 of 401 KAR 38:070.

(2) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. When the application is for an existing hazardous waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet may notify the applicant that the application is complete upon receiving this information.

(3) If an applicant fails or refuses to correct deficiencies in the application or if the applicant fails or refuses to submit additional information, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(4) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, a representative of the cabinet shall notify the applicant and a date shall be scheduled.

(5) The effective date of an application is the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (2) of this section.

(6) For each application, the cabinet shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing; and

(d) Issue a final permit.

Section 2. Modification, Revocation and Reissuance, or Termination of Permits. (1) A permit for a hazardous waste site or facility may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the cabinet's initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 2 and 4 of 401 KAR 38:040 and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of request for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3)(a) If the cabinet tentatively decides to modify or revoke and reissue a permit under Section 2 of 401 KAR 38:040, the cabinet shall prepare a draft permit under Section 3 of this regulation incorporating the proposed changes. The cabinet 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 cabinet shall require the submission of a new application.

(b) In a permit modification under this section, only those conditions to be modified shall be reopended when a new draft permit is prepared. All other aspects of the existing permit shall 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 just 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.

(c) "Minor modifications" as defined in Section 3 of 401 KAR 38:040 are not subject to the requirements of this section.

(4) If the cabinet tentatively decides to terminate a permit under Section 4 of 401 KAR 38:040, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 3 of this regulation.

(5) All draft permits (including notices of intent to terminate) prepared under Sections 3 through 5 of this regulation shall be based on the administrative record as defined in Section 6 of this regulation.

Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the cabinet shall consider the requirements specified in the waste management regulations and in KRS 224.866.

(2) If the cabinet tentatively decides to deny the permit application, it shall 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 procedures as any draft permit prepared under this subsection (see subsection (4)). If the cabinet's final decision is that the tentative decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet decides to prepare a draft permit, the draft permit shall contain the following information:

(a) All conditions under Sections 1 and 3 of 401 KAR 38:030;

(b) All compliance schedules under Section 4 of 401 KAR 38:030;

(c) All monitoring requirements under Section 2 of 401 KAR 38:030; and

(d) Standards for treatment, storage or disposal, and other permit conditions under Section 1 of 401 KAR 38:030.

(4) All draft permits prepared by the cabinet under this section shall be accompanied by a statement of basis (see Section 4 of this regulation) or fact sheet (see Section 5 of this regulation) and shall be based on the administrative record (see Section 6 of this regulation) and publicly noticed (see Section 7 of this regulation), and shall be made available for public comment (see Section 8 of this

regulation). The cabinet shall give notice of the opportunity for a public hearing as required by KRS 224.855 (see Section 9 of this regulation), issue a final decision and respond to comments (see Section 11 of this regulation). An appeal may be taken under KRS 224.081. Draft permits shall be accompanied by a fact sheet if required under Section 5 of this regulation.

Section 4. Statement of Basis. The cabinet shall prepare a statement of basis for every draft permit for which a fact sheet under Section 5 of this regulation is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 5. Fact Sheet. (1) A fact sheet shall be prepared for every draft permit for a [major] hazardous waste site or facility <u>which includes an incinerator, a surface impoundment, disposal facility (i.e., landfill, land treatment facility, injection well, etc.), or a research, development, and demonstration facility</u>, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 6 of this regulation;

(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 7 of this regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

Section 6. Administrative Record for Draft Permits. (1) The provisions of a draft permit prepared by the cabinet under Section 3 of this regulation shall be based on the administrative record defined in this section.

(2) For preparing a draft permit under Section 3 of this regulation, the record shall consist of:

(a) The application, if required, and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application or to terminate the permit;

(c) The statement of basis (see Section 4 of this regulation) or fact sheet (see Section 5 of this regulation);

(d) All documents cited in the statement of basis or the fact sheet; and

(e) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the cabinet's office or published material that is generally available, and that is included in the administrative record under this subsection and subsection (2) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(4) This section applies to all draft permits when public notice was given after the effective date of these regulations.

Section 7. Public Notice of Permit Application and Public Comment Period. (1) Scope.

(a) The cabinet shall give public notice under KRS 224.855(4) and (5) 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(3) of this regulation;

3. A hearing has been scheduled under Section 9 of this regulation; and

4. An appeal has been granted under 401 KAR 40:030.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 2(2) of this regulation. Written notice of that denial shall 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 shall allow at least forty-five (45) days for public comment.

(b) Public notice of a public hearing shall 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 shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

1. The applicant;

2. Any other agency which the cabinet knows has issued or is required to issue an environmental permit for the same facility or activity (including United States Environmental Protection Agency);

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management

plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any other affected states;

4. 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 regional and state funded 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.)

5. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

6. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation as required by KRS 224.855(2) and broadcast over any commercial radio stations which have general coverage in the locality where the proposed site is located.

(c) 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 chapter shall 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;

3. A brief description of the business conducted at the facility or activity described in the permit application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 8 and 9 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. The location of the administrative record required by Section 6 of this regulation, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

7. The statement contained in KRS 224.855(3)(e); and

8. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in subsection (4)(a) of this section, the public notice of a hearing under Section 9 of this regulation shall 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.

(5) In addition to the general public notice described in subsection (4)(a) of this section, all persons identified in subsection (3)(a) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any). The cabinet shall charge for duplication cost and postage.

Section 8. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 7 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 shall be considered in making the final decision and shall be answered as provided in Section 11 of this regulation.

Section 9. Public Hearings. (1)(a) The cabinet shall hold a public hearing on the basis of requests, when a significant degree of public interest in a draft permit(s) is found.

(b) The cabinet at its discretion may also hold a public hearing whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(c) 1. The cabinet shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under Section 7(2)(a) of this regulation is received.

2. Whenever possible the cabinet shall schedule a hearing under this section at a location convenient to the population center nearest to the proposed facility provided the hearing location is in the same county as required by KRS 224.855.

(d) Public notice of the hearing shall be given as specified in Section 7 of this regulation.

(2) Whenever a public hearing will be held, the secretary shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(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 7 of this regulation shall automatically be extended to the close of any public hearing under this regulation. 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 any person upon payment of the actual cost of reproducing the original.

Section 10. Reopening of the Public Comment

Period. (1) If any data, information or arguments submitted during the public comment period (including information or arguments that any condition of the draft permit or permit denial is inappropriate) appear to raise substantial new questions concerning a permit, the cabinet 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 statement of basis under Section 4 of this regulation and reopen the comment period under this section; or

(c) Reopen or extend the comment period under Section 7 of this regulation to give interested persons an 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 7 of this regulation shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

(4) Public notice of any of the above actions shall be issued under Section 7 of this regulation.

Section 11. Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments when a final permit is issued. This response shall:

(a) 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) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) For cabinet issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the cabinet may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) In the case of a hazardous waste disposal site or facility, no permit shall be approved or issued by the cabinet prior to the approvals specified in KRS 224.855(5) and (6). 401 KAR 38:500 details the procedures that the applicant must use in obtaining local government approval or for land disposal facilities the approval of the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.

Section 12. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 7 of this regulation on a draft permit, the cabinet shall issue a final permit decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective on the date issued by the cabinet.

Section 13. Past Performance Considered in Review. Past performance of the owner or operator will be considered in the review and in the determination of any requirement for specialized conditions.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 42:010. General provisions for underground storage tanks.

RELATES TO: KRS 224.033(27), 224.862(3), (4)

PURSUANT TO: KRS Chapter 13A, 224.033(4), (5), (22) through (25), 224.994

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement and control of contaminants which may threaten the environment. This chapter identifies requirements for underground storage tanks. This regulation prohibits installing tanks which are not protected against corrosion and provides for a notification process for identification of all underground storage tanks.

Section 1. Applicability. This regulation applies to all owners or operators of underground storage tanks as defined in Section 2 of this regulation. The provisions of this regulation also apply to persons who deposit regulated substances into underground storage tanks or sell underground storage tanks.

Section 2. Definitions. When used in this chapter the following terms shall have the meanings given below:

(1) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(2) "Owner" means:

(a) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(b) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before discontinuation of its use.

(3) [(1)] "Person" has the same meaning as provided in 401 KAR 30:010, Section 1, except that such term includes a consortium, a joint venture, and a commercial entity.

(4) [(2)] "Regulated substance" means:

(a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 30 through 39); and

(b) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute).

(5) [(3)] "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

(6) [(4)] "Underground storage tank" means any one (1) or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten (10) per centum or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines):

1. Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.); or

2. Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or

3. Which is an intrastate pipeline facility regulated under KRS 278.470, et seq., and 278.992, or other applicable state laws.

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor; and

(j) Any pipes connected to any tank which is described in paragraphs (a) through (i) of this subsection.

Section 3. Interim Prohibition. (1) No person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction):

(a) Will prevent release due to corrosion or structural failure for the operational life of the tank;

(b) Is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, designed in a manner to prevent the release or threatened release of any stored substance; and

(c) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding subsection (1) of this section, if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the cabinet, show that soil resistivity in an installation location is 12,000 ohm-cm or more (unless a more stringent standard is prescribed by the cabinet), a storage tank without corrosion protection may be installed in that location upon approval by the cabinet.

Section 4. Notification Requirements. (1) On or before May 8, 1986, each owner of an underground storage tank currently in use must submit, on a form designated by the cabinet, a notice of the existence of such tank to the cabinet.

(2) On or before May 8, 1986, each owner of an underground storage tank taken out of operation after January 1, 1974 (unless the owner knows that such tank has been permanently removed from the ground), must submit on a form designated by the cabinet, a notice of the existence of such tank to the cabinet.

(3) Any owner that brings an underground storage tank into use after May 8, 1986, must, within thirty (30) days of bringing such tank into use, submit on a form designated by the cabinet, a notice of the existence of such tank to the cabinet.

(4) Owners required to submit notices under subsections (1) through (3) of this section must provide notices to the cabinet for each tank they own. Owners may provide notice for several tanks using one (1) notification form but owners who own more than one (1) place of operation within Kentucky must file a separate notification form for each separate place of operation.

(5) Notices required to be submitted under subsections (1) through (3) of this section must provide all of the information indicated on the prescribed form for each tank for which notice must be given.

(6) Beginning thirty (30) days after the promulgation of this rule, and for eighteen (18) months thereafter, any person who deposits regulated substances in an underground storage tank must make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under subsections (1) through (3) of this section.

(7) Beginning thirty (30) days after the cabinet issues new tank performance standards pursuant to KRS Chapter 224, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under subsections (1) through (3) of this section.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at noon

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

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the prevention of significant deterioration of ambient air quality.

Section 1. Applicability. The provisions of

this regulation are applicable to any major stationary source or any major modification which:

(1) Commenced construction after September 22, 1982 [the effective date of this regulation];

(2) Emits any pollutant regulated by the Clean Air Act; and

(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act. Area designations are contained in 40 CFR 81.318 [in 401 KAR 51:010].

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (a) of this subsection, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Clean Air Act; and

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any permit condition which was established after January 6, 1975; or

b. The source is approved to use under any permit issued under this regulation[, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E,] or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited after January 6, 1975 pursuant to 40 CFR 52.21, after June 6, 1979 pursuant to 401 KAR 51:015, after September 22, 1982 [the effective date of this regulation] pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before January 6, 1975, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this regulation[, 401 KAR 51:015, 401 KAR 51:016E,] or 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable at and after the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180

days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 to 63 and federal air quality control laws and regulations.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Title 401, Chapters 57 and 59 or 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(c) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

1. Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

2. Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act [under 401 KAR 51:010] for the pollutant on the date of its complete application; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major

modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means any area (and every part thereof) designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act [under 401 KAR 51:010] in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one (1) ug/m^3 (annual average) of the pollutant for which the baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in Title 401, Chapters 57 and 59, or 40 CFR 60 and 61;

(b) The applicable state and federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state and federally [an] enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24[, including those requirements developed pursuant to Title 401, Chapters 50 to 63].

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions shall [must] be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(19) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) (a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the rates given in Appendix A of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act that is not listed in Appendix A to this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Appendix A to this regulation, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than one (1) ug/m^3 (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

(27) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(28) "State Implementation Plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(29) "Mandatory Class I federal area" means any area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(30) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(31) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Appendix B of this regulation. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 1 of this regulation shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) The following areas shall be Class I areas and may not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

[(a) In Kentucky, Mammoth Cave National Park is the only [shall be a] Class I area.]

(2) [(b)] [(2)] Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II but may be redesignated as provided in 40 CFR 51.24(g).

(3) The provisions of this regulation relating to visibility protection shall apply only to sources which may impact a mandatory Class I federal area.

[(2) The Class I areas for other states shall be the mandatory Class I federal areas where visibility is an important value as listed in 40 CFR 81, Subpart D.]

Section 6. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from such sources before the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from such sources before the effective date of such plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA.

(2) No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been approved by the U.S. EPA.

(4) The plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide or particulate matter would occur. Such time shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) That the time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) That no emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations will be in effect at the end of the time period specified in accordance with paragraph (a) of this subsection which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of any air pollutant under this regulation shall not be affected in any manner by:

(a) So much of the stack height of any source as exceeds good engineering practice; or

(b) Any other dispersion technique.

(2) Subsection (1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications: Source Applicability and Exemptions. (1) No major stationary source or major modifications to which the requirements

of Sections 9 to 17 of this regulation apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(2) The requirements of Sections 9 to 17 of this regulation shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulations under the Clean Air Act that it would emit, except as otherwise provided in Section 1 of this regulation.

(3) The requirements of Sections 9 to 17 of this regulation shall apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act [under 401 KAR 51:010]. Major volatile organic compound sources locating in an area unclassified for ozone may choose to accept the non-attainment area review requirement immediately pursuant to 401 KAR 51:052 and conduct post-approval monitoring for ozone.

(4) The requirements of Sections 9 to 17 of this regulation shall not apply to a particular major stationary source or major modification if:

(a) The owner or operator:

1. Obtained a federal, state or local preconstruction approval effective before September 22, 1982 [the effective date of this regulation];

2. Commenced construction before September 22, 1982 [the effective date of this regulation]; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source or [of] modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59 or 40 CFR Parts 60 and 61; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;
2. The emissions from the source would not exceed its allowable emissions;
3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(5) The requirements of Sections 9 to 17 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, relative to that pollutant, the source or modification is located in an area designated as non-attainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act [under 401 KAR 51:010].

(6) The requirements of Sections 10, 12 and 14 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(7) The requirements of Sections 10, 12 and 14 of this regulation as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulations under the Clean Air Act from the modification after the application of best available control technology would be less than fifty (50) tons per year.

(8) The cabinet may exempt a stationary source or modification from the requirements of Section 12 of this regulation with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the amounts given in Appendix C to this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Appendix C to this regulation, or the pollutant is not listed in Appendix C to this

regulation.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under Title 401, Chapters 50 to 63 and each applicable emission standard and standard of performance pursuant to 40 CFR 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

Section 11. Air Quality Models. (1) All estimates of ambient concentrations required under this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015.

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change will [must] be subject to notice and opportunity for public comment under Section 17 of this regulation. Written approval of the U.S. EPA must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models," filed by reference in 401 KAR 50:015, should be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) Any application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

1. For the source, each pollutant that it would have the potential to emit in a significant amount as defined in Section 2(23) of this regulation;

2. For the modification, each pollutant for which it would result in a significant net emissions increase.

(b) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the cabinet determines are [is] necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that are [is] required shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the applicant demonstrates through historical data or dispersion models that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the data that are [is] required shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 401 KAR 51:052 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraphs (a) to (d) of this subsection.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, filed by reference in 401 KAR 50:015, during the operation of monitoring stations for purposes of satisfying subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this regulation.

(1) With respect to a major source or major modification to which Sections 9, 11, 13 and 15 of this regulation apply, such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The cabinet may require monitoring of visibility in any Class I area impacted by the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, [or] fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. Any visibility monitoring required by the cabinet in a Class I area will be approved by the federal land manager. Data obtained from any visibility monitoring shall be made available to the cabinet, U.S. EPA, and the federal land manager, upon request.

Section 15. Sources Impacting [Federal] Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide written notice of any permit application for a proposed major stationary source or major modification the emissions from which may [would] affect a Class I area to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area. The cabinet shall provide such notice promptly after receiving the application. Such notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The cabinet shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Section 17 of this regulation, and shall make available to them any materials used in making that determination, promptly after the cabinet makes it. Finally, the cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of any advanced notification of any such permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The cabinet shall consider any analysis performed by the federal land manager, provided within thirty (30) days of the notification and analysis required by subsection (1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Class I area. Where the cabinet finds that such analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be explained.

(4) [(3)] Denial; impact on air quality related values. The federal land manager of any such lands may demonstrate to the cabinet that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Appendix B to this regulation. If the cabinet concurs with such demonstration then the cabinet shall not issue the permit.

(5) [(4)] Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the cabinet may, provided that the applicable requirements of this regulation are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the maximum allowable increases over baseline concentration for such pollutants specified in Appendix D to this regulation.

(6) [(5)] Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (5) [(4)] of this section may demonstrate to the Governor of the Commonwealth

of Kentucky that the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and [, in the case of federal mandatory Class I areas,] that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the cabinet shall issue a permit to such source or modification pursuant to the requirements of subsection (8) [(7)] of this section, provided that the applicable requirements of this regulation are otherwise met.

(7) [(6)] Variance by the governor with the president's concurrence. In any case where the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved, the cabinet shall issue a permit pursuant to the requirements of subsection (8) [(7)] of this section, provided that the applicable requirements of this regulation are otherwise met.

(8) [(7)] Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (6) or (7) [(5) or (6)] of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the maximum allowable increases over the baseline concentration as specified in Appendix E of this regulation and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period.

Section 16. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who begins actual construction after September 22, 1982 [the effective date of this regulation] without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 9 to 18 of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the cabinet conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet shall, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) of this regulation by a date specified by the cabinet. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance.

(c) The source or modification would meet the requirements of Sections 9 and 10 of this regulation based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the cabinet;

(d) The source or modification would not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard;

2. Impact any Class I area; or

3. Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw any approval to employ a system of innovative control technology made under this regulation if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Section 20. Permit Condition Rescission. (1) Any owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the cabinet that this regulation would [does] not apply to the source or modification or a portion thereof.

APPENDIX A TO 401 KAR 51:017
Significant Net Emissions Rates

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

APPENDIX B TO 401 KAR 51:017
Ambient Air Increments

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Class II	
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

APPENDIX C TO 401 KAR 51:017
Significant Air Quality Impact

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 ug/m^3	8-hour average
Nitrogen dioxide	14 ug/m^3	annual average
Total suspended particulate	10 ug/m^3	24-hour average
Sulfur dioxide	13 ug/m^3	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this regulation would be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 ug/m^3	24-hour average
Mercury	0.25 ug/m^3	24-hour average
Beryllium	0.001 ug/m^3	24-hour average
Fluorides	0.25 ug/m^3	24-hour average
Vinyl chloride	15 ug/m^3	24-hour average
Hydrogen sulfide	0.04 ug/m^3	1-hour average

APPENDIX D TO 401 KAR 51:017
Ambient Air Increments
for Class I Variances

	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

APPENDIX E TO 401 KAR 51:017
Ambient Air Increments for Presidential
or Gubernatorial SO_2 Variances

Maximum Allowable Increase
(Micrograms per cubic meter)

	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at 11 a.m.

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

401 KAR 51:052. Review of new sources in or impacting upon non-attainment areas.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation establishes requirements for the construction, modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Applicability. (1) The requirements of this regulation shall apply to new major sources or major modifications commenced after the classification date defined below and that will locate in or impact upon any area designated as non-attainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act [in 401 KAR 51:010]. Areas designations are contained in 40 CFR 81.318.

(2) The provisions of this regulation relating to visibility protection shall also apply to major sources or major modifications in non-attainment areas which potentially have an impact on visibility in any mandatory Class I federal area.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010 or for terms relating to the protection of visibility, in 401 KAR 51:017.

(1) "Major stationary source" means:

(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(c) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to [401 KAR 51:015, 401 KAR 51:016E or] 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or

b. The source is approved to use under any permit issued under this regulation[, previously adopted regulations 401 KAR 51:050 and 401 KAR 51:051E, or under 40 CFR 51, Appendix S];

5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or pursuant to [401 KAR 51:015, 401 KAR 51:016E or] 401 KAR 51:017 or under regulations established pursuant to 40 CFR 51.18; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change

occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable at and after the time that actual construction on the particular change begins;

3. The cabinet has not relied on it in issuing any permit or in demonstrating attainment or reasonable further progress; and

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.

(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable permit conditions which limit operating rate, or hours or operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, or 40 CFR Parts 60 and 61;

(b) Any other state and federally approved regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as a state and federally [an] enforceable permit condition, including those with a future compliance date.

(12) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24 [having the legal authority to compel a source to comply with limitations and conditions including those developed pursuant to Title 401, Chapters 50 to 63].

(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(14) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date

and which is representative of normal source operation. The cabinet shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The cabinet may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(15) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59, and 40 CFR Parts 60 and 61.

[(18) "VOC" means volatile organic compounds.]

(18) [(19)] "Classification date" means September 22, 1982 [the effective date of this regulation].

(19) [(20)] "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(20) [(21)] "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(21) [(22)] "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this regulation.

(22) "Class I area" means the areas listed in paragraph (a) of this subsection. These areas may not be redesignated. [any area listed in 40 CFR 81, Subpart D.]

(a)1. International parks;

2. National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

3. National parks which exceed 6,000 acres in size.

(b) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II but may be redesignated as provided in 40 CFR 51.24(g).

(23) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(24) "State Implementation Plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(25) "Mandatory Class I federal area" means any area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(26) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(27) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The cabinet shall examine each proposed major new source and proposed major modification to determine if such source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the cabinet shall determine whether the major stationary source or major modification would be constructed in an area designated [in 401 KAR 51:010] as non-attainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act for a pollutant for which the stationary source or modification is major. If a designated non-attainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Sections 5 and 10 [11] of this regulation shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59, or [and] 40 CFR Parts 60 and 61.

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act [specified in 401 KAR 51:010] if the source or modification would cause impacts which exceed the significance levels specified in Appendix B of this regulation at any locality that does not meet the national ambient air quality standards.

(2) Sources to which this section applies must meet the requirements in Section 5(1), (2) and (4) of this regulation. However, such sources may be exempt from Section 5(3) of this regulation.

(3) For sources of sulfur dioxide, particulate matter, and carbon monoxide, the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.

(4) For sources of nitrogen oxides, the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOC, locating outside a designated ozone non-attainment area [as defined in 401 KAR 51:010], will be presumed to have no significant impact on the designated non-attainment area. If ambient monitoring indicates that the area of source location is in fact non-attainment, then the source may be permitted under the applicable provisions of this regulation until the area is designated non-attainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act [in 401 KAR 51:010]. Once the area of source location has been redesignated to non-attainment status in 40 CFR 81.318 [401 KAR 51:010], the provisions of Section 5(3) and (4) of this regulation as they relate to emissions of VOC shall not apply, provided the area is not also an urban county as defined in 401 KAR 50:010.

(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if both the following conditions are met:

(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, such that the new source will not cause a violation of any national ambient air quality standard.

(b) The new emission limitations for the new source as well as any existing sources affected must be state and federally enforceable in accordance with the mechanisms set forth in Section 7 [8] of this regulation.

Section 5. Conditions for Approval. The provisions of this section shall apply to new major stationary sources or major modifications which would be constructed in an area designated [in 401 KAR 51:010] as non-attainment pursuant to Section 107(d)(1)(A), (B) or (C) of the Clean Air Act for a pollutant for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, and 40 CFR Parts 60 and

61 and the Clean Air Act, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3) Emissions from existing sources in the affected area of the proposed new major source or modifications (whether or not under the same ownership) shall be reduced (offset) such that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(4) The emission reductions shall be such as to provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling is not necessary for volatile organic compounds and oxides of nitrogen. Except as provided in Section 4(5) of this regulation, compliance with subsection (3) of this section and Section 6 [7](7) of this regulation will be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated non-attainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this regulation shall specify that construction shall not commence until the U.S. EPA has approved the cabinet's plan relating to the requirements of Part D, Title I, of the Clean Air Act.

(6) In non-attainment areas which have been granted an extension of the deadline to attain the primary national ambient air quality standard for ozone or carbon monoxide, pursuant to Section 172(a)(2) of the Clean Air Act, the proposed major stationary source or major modification shall include in the application for a construction permit, an analysis of the alternative sites, sizes, production processes, and environmental control techniques for such proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

[Section 6. Exemptions from Certain Conditions. The following sources are exempt from Section 5(3) and (4) of this regulation:]

[(1) Resource recovery projects burning municipal solid waste;]

[(2) Sources which must switch fuels due to lack of adequate fuel supplies or a source which is required to be modified as a result of federal regulations or other federal statutes and from which no exemption from such regulation or statute is available to the source. Such exemption shall be granted only if all the requirements of subsection (3) of this section are met;]

[(3) The exemptions contained in this section for sources identified under subsections (1) and (2) of this section shall be granted only if:]

[(a) The applicant demonstrates to the cabinet's satisfaction that it has made its best efforts to obtain sufficient emission offsets to comply with Section 5(3) and (4) of this regulation and that such efforts were unsuccessful;]

[(b) The applicant has secured all available emission offsets; and]

[(c) The applicant will continue to seek the necessary emissions offsets and apply them when they become available.]

[(4) Such an exemption may result in the need to revise the applicable requirements of the cabinet to provide additional control of existing sources so as to achieve reasonable progress towards attainment of applicable ambient air quality standards.]

[(5) Temporary emission sources, such as pilot plants, portable facilities which will be relocated after a short period of time not to exceed 120 days, and emissions resulting from the construction phase of a new source, shall be exempt from Section 5(3) and (4) of this regulation.]

[(6) Secondary emissions associated with major sources or major modifications locating in or impacting upon a non-attainment area may be exempt from Section 5(1) and (2) of this regulation, providing that the source of the secondary emissions is not itself a major stationary source or major modification. If the source of the secondary emissions is itself a major source or major modification, then that source is subject to the provisions of this regulation.]

Section 6. [7.] Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets will be the emission limitations in effect at the time the application to construct or modify a source is filed. For areas where the demonstration of attainment for the State Implementation Plan was based on actual emissions, the baseline for determining offset credit shall be actual emissions. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis providing that baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. Where the cabinet requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. Where the requirements of the cabinet do not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be actual emissions determined under actual operating conditions for the previous two (2) year period. Where the emission limitations required by the cabinet allow greater emissions than the uncontrolled emission rate of the source, emission offset credit will be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the emission limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date,

any resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(4) Credit for hydrocarbon substitution. No emission offset credit may be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane and trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after January 16, 1979 may bank offsets that exceed the requirements of reasonable progress toward attainment for future use. An owner or operator of an existing source that reduces its own emissions may bank any resulting reduction beyond those required by regulation for use under this regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in the Clean Air Act as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy. The banked emissions may be used pursuant to procedures specified in 401 KAR 51:055.

(6) Offset credit for meeting NSPS or NESHAPS. Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained only within the same air quality control region, as defined in 401 KAR 50:020 in which the source is to be located. For sulfur dioxide, particulate matter and carbon monoxide, the cabinet shall require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving VOC, offsetting emissions may be obtained only as provided in 401 KAR 51:055, Section 11(2).

Section 7. [8.] Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or the cabinet. The emission reduction committed to must be state and federally enforceable by the cabinet, and must be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth of Kentucky for a new source to be located in the Commonwealth, the emission reductions committed to must be state and federally enforceable by the neighboring state and/or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner and/or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) and/or reductions from other sources (external emission offsets). As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable. An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset will not be accepted unless the affected source(s) is subject to a new emission limitation requirement of the cabinet to ensure that its emissions will be reduced by a specified amount in a specified time. The form of the new emission limitation may be a cabinet regulation, operating permit condition, or consent or enforcement order.

(2) Cabinet initiated emission offsets. The cabinet may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source so as to accommodate the proposed new source. The commitment must be reflected in the emission limitation requirements of the cabinet for the new and existing sources as required by this section.

Section 8. [9.] Source Obligation. (1) Any owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who begins actual construction after September 22, 1982 [the effective date of this regulation] without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any state and federally enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 9. [10.] Permit Condition Rescission. (1) Any owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the permit condition.

(2) The cabinet shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the cabinet that this regulation does not apply to the source or modification or a portion thereof **if construction would have commenced after September 22, 1982, and if the owner or operator demonstrates that such rescission would not interfere with reasonable further progress**.

Section 10. [11.] Protection of Visibility. (1) New source review - applicability and exemptions.

(a) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(b) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as non-attainment under Section 107(d)(1)(A), (B), or (C) of the Clean Air Act and potentially has an impact on visibility in any Class I area.

(c) The requirements of this section shall apply to any such major stationary source and any such major modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(d) The requirements of this section shall not apply to a particular major stationary source or major modification if:

1. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

2. The source is a portable stationary source which has previously received a permit under this section; and:

a. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would impact no Class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on such values.

(b) The cabinet shall provide written notification to all affected federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Class I area. The cabinet shall also provide such notification to the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any Class I area. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of any advance notification of any such permit application.

(c) The cabinet shall consider any analysis performed by the federal land manager provided wthin thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any Class I area. Where the cabinet finds that such an analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be obtained.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this section. The cabinet shall follow the procedures at 40 CFR 52.21(r) as in effect on August 7, 1980, to the extent that the procedures of 401 KAR 50:035 do not apply.

(5) National visibility goal. The cabinet shall only issue permits to those sources whose

emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in Class I areas which impairment results from man-made air pollution. In making the decision to issue a permit the cabinet may take into account the overriding factors of the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(6) Monitoring. The cabinet may require monitoring of visibility in any Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, [or] fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. Any visibility monitoring required by the cabinet in a Class I area will be approved by the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

APPENDIX A TO 401 KAR 51:052
Significant Pollutant and Emissions Rate

Carbon monoxide:	100 per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

APPENDIX B TO 401 KAR 51:052
Significant Levels of Air Quality Impact

Pollutant	Annual Average	Averaging Time 24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 ug/m^3	5 ug/m^3	--	25 ug/m^3	--
Total Suspended Particulates	1.0 ug/m^3	5 ug/m^3	--	--	--
Nitrogen Dioxide	1.0 ug/m^3	--	--	--	--
Carbon Monoxide	--	--	0.5ug/m^3	--	2ug/m^3

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 14, 1986 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:020. Definitions and abbreviations.

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 promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for

hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet for the issuance for exploration approval or a permit.

(8) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350 and either [,] 405 KAR 16:100; 405 KAR 16:060, Section 10; and 405 KAR 16:210 or 405 KAR 18:100; 405 KAR 18:060, Section 10 [8]; and 405 KAR 18:220.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Area" as used in Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Title 405, Chapters 7 through 24.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of Title 405, Chapters 7 through 24 where such activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas [collection of facilities, including all associated support facilities and operations, where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities].

(19) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(20) "Collateral bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional,

mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(23) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(24) "Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.

(25) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(26) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87).

(27) "Day" means calendar day unless otherwise specified to be a working day.

(28) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(29) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(30) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 10 is released.

(31) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(32) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(33) "Embankment" means a man-made deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

[(37) "Experimental practice," as used in 405 KAR 7:060, means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.]

(37) [(38)] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(38) [(39)] "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(39) [(40)] "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 Stat. 445 (30 USC Section 1201 et. seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(40) [(41)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(41) [(42)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(42) [(43)] "Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal.

(43) [(44)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(44) [(45)] "General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(45) [(46)] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from

general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(46) [(47)] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(47) [(48)] "Grazingland" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(48) [(49)] "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(49) [(50)] "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(50) [(51)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(51) [(52)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(52) [(53)] "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects, or sites for which historic designation is pending.

(53) [(54)] "Historically used for cropland:"

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(54) [(55)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(55) [(56)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(56) [(57)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(57) [(58)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(58) [(59)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(59) [(60)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral

part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(60) [(61)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(61) [(62)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(62) [(63)] "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(4) and 14(9) only, means any damage to the environment that cannot be corrected by actions of the applicant.

(63) [(64)] "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(64) [(65)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(65) [(66)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(66) [(67)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(67) [(68)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(68) [(69)] "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(69) [(70)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(70) [(71)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(71) [(72)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(72) [(73)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(73) [(74)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(74) [(75)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(75) [(76)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(76) [(77)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(77) [(78)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(78) [(79)] "Performance bond" means a surety bond, collateral bond, cash bond, letter of credit or a combination thereof, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(79) [(80)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(80) [(81)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(81) [(82)] "Permit area" means the area of

land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(82) [(83)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS 350 and Title 405, Chapters 7 through 24 are satisfied.

(83) [(84)] "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(84) [(85)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(85) [(86)] "Petitioner" means a person who submits a petition under Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under Title 405, Chapter 24 to terminate such a designation.

(86) [(87)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(87) [(88)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(88) [(89)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(89) [(90)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(90) [(91)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(91) [(92)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(92) [(93)] "Public building" means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(93) [(94)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(94) [(95)] "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(95) [(96)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(96) [(97)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(97) [(98)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(98) [(99)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(99) [(100)] "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(100) [(101)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(101) [(102)] "Refuge pile" means a surface deposit of coal mine waste that that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semi-liquid material.

(102) [(103)] "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(103) [(104)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(104) [(105)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used

for part of the road construction procedure and promptly replaced by a road pursuant to Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(105) [(106)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(106) [(107)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(107) [(108)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(108) [(109)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(109) [(110)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(110) [(111)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(111) [(112)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(112) [(113)] "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(113) [(114)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated during surface coal mining and reclamation operations.

(114) [(115)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(115) [(116)] "Steep slope" means any slope of more than twenty (20) degrees.

(116) [(117)] "Substantially disturb" means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(117) [(118)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(118) [(119)] "Surety bond" means an idemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(119) [(120)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(120) [(121)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine-site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an

integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps. stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(121) [(122)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(122) [(123)] "Suspended solids" or nonfilterable residue, expressed as miligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(123) [(124)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(124) [(125)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(125) [(126)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(126) [(127)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(127) [(128)] "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(128) [(129)] "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(129) [(130)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(130) [(131)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(131) [(132)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(132) [(133)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or permit conditions.

(133) [(134)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(134) [(135)] "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(135) [(136)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of ground water.

(136) [(137)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (P.L. 95-87), KRS Chapter 350, the regulations of Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result

which actually occurs.

Section 2. Abbreviations. As used in Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre
CFR - Code of Federal Regulations
dB - decibels
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
Hz - hertz
KAR - Kentucky Administrative Regulations
KPDES - Kentucky Pollutant Discharge Elimination System
KRS - Kentucky Revised Statutes
l - liter
mg - milligram
MRP - mining and reclamation plan
MSHA - Mine Safety and Health Administration
NPDES - National Pollutant Discharge Elimination System
OSM - Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS - Soil Conservation Service
SMCRA - Surface Mining Control and Reclamation Act of 1977, P.L. 95-87
USDA - United States Department of Agriculture
USDI - United States Department of the Interior
U.S. EPA - United States Environmental Protection Agency
USGS - United States Geological Survey

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:

(a) The permit applicant, including his or her telephone number;

(b) Every legal or equitable owner of record of the property to be mined;

(c) The holders of record of any leasehold interest in the property to be mined;

(d) Any purchaser of record, under a real estate contract, of the property to be mined;

(e) The operator, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his or her telephone number; and

(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.

(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;

(b) Name and address of any person who is a principal shareholder of the applicant;

(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;

(d) If a partnership, a certified copy of the partnership agreement; and

(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State; and if a foreign corporation, a certified copy of the certificate of authority to conduct business within the Commonwealth of Kentucky.

(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and

all sections.

(7) Each application shall contain proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any such suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (P.L. 95-87) or KRS Chapter 350 and regulations promulgated thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Title 405, Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological features within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historical, and cultural preservation agencies.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those

strata from the lowest coal seam to be mined down to and including such aquifers.

3. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to such aquifers.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information. (1) The application shall contain baseline ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to the effective date of these amendments, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer

storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial use.

(2) If contamination, diminution, or interruption of a surface or ground water source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b).

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey [cause such a survey to be made].

(a) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey for lands within the proposed permit area contains no soil map units which have [not] been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section. [Any such request for negative determination shall include signed, notarized affidavits from landowners identifying the uses of the land for each year of the ten (10) year period.]

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area:

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for such data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and non-coal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of Title 405, Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of

blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4) [(9)], rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, [and] 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405

KAR 16:060, Section 5 [6]; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3);

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the pre-mining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 16:210;

(c) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.
(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.
(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.
(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:
1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.
(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

Section 2. Identification of Interests. (1) Each application shall contain the names and addresses of:
(a) The permit applicant, including his or her telephone number;
(b) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;
(c) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;
(d) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;
(e) The operator, if different from the applicant, who will conduct underground coal mining activities on behalf of the applicant, including his or her telephone number; and
(f) The resident agent of the applicant who will accept service of process, including his or her telephone number.
(2) If any owner, holder, purchaser, or operator, identified under subsection (1) of this section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resident agents.
(3) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For businesses other than single proprietorships, the application shall contain the following information where applicable:
(a) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant;
(b) Name and address of any person who is a principal shareholder of the applicant;
(c) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application;
(d) If a partnership, a certified copy of the partnership agreement; and
(e) If a domestic corporation, a certified copy of the certificate of incorporation from the Secretary of State, and if a foreign corporation, a certified copy of the Certificate of Authority to conduct business within the Commonwealth of Kentucky.
(4) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.
(5) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.
(6) Each application shall contain the name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all sections.
(7) Each application shall contain proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.
(8) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

Section 3. Compliance Information. (1) Each application shall contain: a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:
(a) Had a coal mining permit of the United States or any state suspended or revoked in the last five (5) years; or
(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.
(2) If any such suspension, revocation, or forfeiture, as described in subsection (1) of

this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) Each application shall contain a list of each violation notice pertaining to SMCRA (PL 95-87) or KRS Chapter 350 and regulations promulgated pursuant thereto, received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule or regulation. The application shall also contain a statement regarding each violation notice, including:

(a) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the fact of the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the fact of the violation and the current status of the proceedings; and

2. The actions, if any, taken or being taken by the applicant to abate the violation.

(4) Upon request by a small operator as defined in KRS 350.450(4)(d), the cabinet will provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under Title 405, Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying such underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of

approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the complete application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the cabinet and made a part of the complete application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2) Each application shall describe and identify the nature of cultural and historic resources listed in or eligible for listing in the National Register of Historic Places and known archaeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic, and cultural preservation agencies.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by KAR Title 405 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and ground water monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that such data extrapolation techniques are valid and that information obtained through such techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and such aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a

potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet will not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of such aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and such aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information. (1) The application shall contain baseline ground water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Ground water information shall include an inventory of wells, springs, underground mines, or other similar ground water supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other ground water supply facilities.

(3) Ground water information shall include seasonal ground water quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate ground water monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal ground water quantity and quality data shall be provided for each water transmitting zone above,

and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Ground water levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collectd prior to the effective date of these amendments, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The ground water information described in subsection (3) of this section will be required in whole or in part for coal seams in those cases where coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require ground water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive runoff from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from such facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request such additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include such information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2.

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring such study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 21. Prime Farmland Investigation. (1)

The applicant shall conduct a pre-application investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no such soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey [cause such a survey to be made].

(a) When a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for such designated land.

(b) When a soil survey as required by this section contains no soil map units which have [not] been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for such non-designated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section. [Any such request for negative determination shall include signed, notarized affidavits from landowners identifying the uses of the land for each year of the ten (10) year period.]

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed in or eligible for listing in

the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for such data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 [38] of this regulation, showing how the applicant will comply with KRS Chapter 350 and Title 405, Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent

areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under Title 405, Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Title 405, Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC Sec. 7401 et seq.), the Clean Water Act (33 USC Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Title 405, Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of Title 405, Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of Title 405, Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of Title 405, Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands.

(2) If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with such conclusion, no further information need be provided in the application under this section.

(3) In the event the survey shows such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface including such measures as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of non-cancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:

1. The results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section

27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the cabinet and other agencies as required in 405 KAR 24:040, Section 2(4).

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) the description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary in order to enable the operation to meet such requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9 [5, and 7], and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For ground water systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage

conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of ground water and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of Title 405, Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is twenty (20) feet or higher or impounds more than twenty (20) acre-feet, each plan under subsection (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife. Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring such plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(a) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(b) Where a land use different from the premining land use is proposed, all supporting documentation submitted for approval of the proposed use under 405 KAR 18:220;

(c) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.

(2) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(3) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of this Title.

Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.

(1) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

Section 39. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:050. Permits for special categories of mining.

RELATES TO: KRS 350.093, 350.445, 350.450, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations, including certain special categories of mining. This regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, offsite coal preparation plants, mountaintop removal mining, and mining on steep slopes. This regulation sets forth the only variance from the requirement to return to approximate original contour in steep slopes. This regulation sets forth the manner in which the contemporaneous reclamation requirements can be met for combined surface and underground mining activities.

Section 1. In Situ Processing Activities. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(2) Application requirements. Any application for a permit for operations covered by this section shall be made according to all requirements of this chapter applicable to underground mining activities. In addition, the

mining and reclamation operations plan for operation involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 405 KAR 20:080, including:

(a) Delineation of proposed holes and wells and production zone for approval of the cabinet;

(b) Specifications of drill holes and casing proposed to be used;

(c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(d) Plans for monitoring surface and ground water and air quality, as required by the cabinet.

(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the cabinet first finds, in writing, upon the basis of a complete application made in accordance with subsection (2) of this section that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:080 and Title 405, Chapter 18.

Section 2. Augering. (1) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 405 KAR 20:030. No permit shall be issued for any operations covered by this section unless the cabinet finds, in writing, that in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 405 KAR 20:030.

(2) Augering on previously mined lands.

(a) In addition to other requirements of Title 405, Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of Title 405 shall contain such information as the cabinet deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.

(b) If the cabinet determines that the affected area cannot be stablized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.

(c) The cabinet shall, consistent with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

(d) The cabinet shall ensure that all applicable performance standards can be met.

Section 3. Prime Farmlands. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to [except]:

(a) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977.

(b) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, "renewal" of a permit shall mean a decision by the cabinet to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the cabinet to allow changes in the method of mining operations within the original permit area, or the decision of the cabinet to allow incidental boundary changes to the original permit. [; or]

(c) Lands included in any existing surface coal mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

1. Such lands are part of a single continuous surface coal mining operation [mining pit] begun under a permit issued before August 3, 1977; and

2. The permittee had a legal right to mine the lands prior to August 3, 1977 through ownership, contract, or lease but not including an option to buy, lease or contract; and

3. The lands contain[ed] part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be a part of a single continuous surface coal mining operation) [the pit] begun under a permit issued prior to August 3, 1977.

4. A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the permittee can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were a part of a single permitted operation. For the purpose of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds, or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one (1) surface coal mining operation.

5. [(d)] For the purposes of this paragraph [subsection] a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(d) The following facilities associated with an underground mining activity, if the facilities affect a minimal amount of land [total of two (2) acres or less of prime farmland] and if the facilities are actively used over extended periods of time [for a period of five (5) years or more]:

1. Coal processing [preparation] plants;

2. Support facilities; and

3. Roads.

(2) Application requirements. If land within the proposed permit area is identified as prime farmland under 405 KAR 8:030, Section 21 or 405 KAR 8:040, Section 21, the applicant shall submit a plan for the mining and restoration of

the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area conducted by the SCS according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (SCS[, 1975]) [as amended] and 18 "Soil Survey Manual" (SCS[, 1951]) as incorporated by reference in 405 KAR 7:015 [as amended]. The SCS establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. The National Soils Handbook is available for review at area and state SCS offices.

1. The soil survey shall include a soils map, a description of each soil mapping [map] unit, and [representative soil] profile descriptions of each soil using representative descriptions from the soil survey area as determined by the SCS including, but not limited to, soil-horizon depths, textures, pH values, and consistence for each prime farmland soil unit within the permit area [unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey are available and their use is approved by the cabinet].

2. In addition to the representative soil profile description provided by the SCS, the applicant may submit site-specific soil profile descriptions of the permit area prime farmland soil mapping units. These descriptions shall be prepared by persons meeting the qualification requirements of the SCS prime farmland specifications incorporated by reference in 405 KAR 20:040 [a soil scientist meeting the requirements for certification by the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) as a Professional Soil Scientist or Professional Soil Classifier; however, actual certification by ARCPACS shall not be required]. These descriptions must meet NCSS standards and shall include the name, address and qualifications of the soil scientist that prepared them. If such on-site descriptions are not obtained and included in the application, then the representative soil profile descriptions provided by the SCS shall be deemed by the cabinet as representative of the soils in the permit area and the soil-horizon depths and other data therein shall serve as a basis for determining whether reclaimed prime farmland areas have been restored to proper depth and meet other reconstruction standards of 405 KAR 20:040, Section 4.

3. Bulk density of the prime farmland soils prior to mining shall be documented and included in the application. These densities shall be obtained either by testing samples from each soil mapping unit by ten (10) inch soil layers or by using estimates provided for each soil series by the SCS.

4. The cabinet may require the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the applicant has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 405 KAR 20:040.

(b) A detailed plan for soil removal, storage, and reconstruction which demonstrates that the applicant has the technological capability to comply with 405 KAR 20:040. The plan shall include at a minimum:

[1. A description of the timing and sequence of soil removal and reconstruction in relation to mining operations which will provide for soil handling operations to be conducted during dry seasons and provide for continuous mining operations. This subparagraph shall apply to each permit issued and renewed and each mid-term review conducted on or after thirty (30) days after the effective date of this amendment to this regulation.]

1. [2.] The proposed methods and types of equipment to be used for soil removal, storage, and reconstruction, including equipment operation patterns, use of ripping and chiseling, stockpile locations and erosion control measures, etc.

2. [3.] A description of measures to be taken to avoid excessive compaction of soils.

3. A description of measures to be taken to ensure that soil removal, handling, and reconstruction operations shall be conducted within soil moisture ranges that will minimize compaction.

4. A description of any soil amendments to be applied.

5. Maps, plans, and cross-sections depicting the location and acreages of reconstructed prime farmland soil mapping units, final grading configuration, drainage and erosion control measures.

[(b) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with 405 KAR 20:040.]

[(c) A demonstration that excessive compaction will be avoided in replacement of the soil.]

[(d) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.]

[6. [(e)] If applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, and a demonstration as is required for topsoil substitution or supplementation in 405 KAR 16:050, Section 2(5) that supports the use of other suitable material, instead of the A, E, B, or C soil horizon, to create a final soil having a greater productive capacity than that which exists prior to mining [obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management].]

[(f) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Title 405, Chapter 10. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.]

6. [7.] [(g)] Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes according to the requirements of 405 KAR 20:040, if any, will achieve, within a reasonable time, levels of yield equivalent to,

or higher than, those of non-mined prime farmland in the surrounding area [equivalent or higher levels of yield after mining as existed before mining]. **The demonstration for soil substitutes or mixtures shall include analyses performed by a qualified soil scientist and such analyses of physical and chemical parameters of the original soils and the substitute soil materials or soil mixtures as required by the cabinet (which shall be conducted by a qualified laboratory).**

(c) A plan for revegetation, crop production and demonstration of restoration of soil productivity in conformance with 405 KAR 20:040, Section 5. The cabinet may allow detailed cropping plans, including items such as identification of reference crops, locations of test plots, and yield measurement methodologies, to be submitted after issuance of the permit, as a revision to the permit, provided that the permit is conditioned to required submission of the detailed plan at least one (1) year prior to initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040. The initial revegetation plan, however, must be included in the application before the permit is issued. Permits issued prior to the effective date of this amendment shall be revised to comply with this paragraph at least one (1) year prior to initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040.

(3) Cabinet consultation with the SCS [Secretary of Agriculture].

(a) Before any permit is issued for areas that include prime farmlands, the cabinet shall consult with the state conservationist, SCS [Secretary of Agriculture].

(b) The state conservationist shall [Secretary of Agriculture may] provide for the review of and comment on [of] the proposed method of soil reconstruction in the plan submitted under subsection (2) of this section. If the state conservationist considers those methods to be inadequate, he or she shall [The secretary may] suggest revisions to the cabinet resulting in more complete and adequate reconstruction.

[(c) Consultations shall be accomplished through the office of the State Conservationist of the U.S. SCS.]

(4) Criteria for approval. A permit for the mining and reclamation of prime farmland may be granted by the cabinet, if it first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed postmining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under subsection (2) of this section, after consideration of any revisions to that plan suggested by the state conservationist [Secretary of Agriculture] under subsection (3) of this section;

(c) There is a technologically feasible plan to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(d) The proposed operations will be conducted in compliance with the requirements of 405 KAR 20:040 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of Title 405, Chapters 7 through 24.

Section 4. Mountaintop Removal Mining. (1) Applicability. This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(2) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 405 KAR 20:050, Section 1(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(3) Criteria for approval. The cabinet may issue a permit for mountaintop removal mining, without regard to the requirements of 405 KAR 16:190 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(a) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

1. After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the cabinet to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

2. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210;

3. The proposed use would be compatible with adjacent land uses and existing state and local land use plans and programs; and

4. The cabinet has provided, in writing, an opportunity of not more than sixty (60) days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the cabinet, in its discretion, determines to have an interest in the proposed use.

(b) The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 405 KAR 16:190, the operation will be conducted in compliance with the requirements of 405 KAR 20:050.

(c) The requirements of 405 KAR 20:050 are made a specific condition of the permit.

(d) All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 are met by the proposed operations.

(e) The permit is clearly identified as being for mountaintop removal mining.

(4) Periodic review:

(a) Any permits issued under this section shall be reviewed by the cabinet to evaluate the progress and development of mining activities to establish that the permittee is proceeding in accordance with the terms of the permit:

1. Within the sixth month preceding the third year from the date of its issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(b) Any review required under paragraph (a) of this subsection need not be held if the permittee has demonstrated and the cabinet finds, in writing, within three (3) months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(5) Modifications of permit. The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 5. Steep Slope Mining. (1) This section applies to any persons who conduct or intend to conduct steep slope surface coal mining and reclamation operations, except:

(a) Where an applicant proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(b) Where a person obtains a permit under the provisions of Section 4 of this regulation; or

(c) To the extent that a person obtains a permit incorporating a variance under Section 6 of this regulation.

(2) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

(3) No permit shall be issued for any operations covered by this section, unless the cabinet finds, in writing, that in addition to meeting all other requirements of this chapter, the operation will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining. (1) General.

(a) Applicability. This section applies to non-mountaintop removal, steep slopes surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 405 KAR 16:190 or 405 KAR 18:190 and 405 KAR 20:060, Section 2(3).

(b) This section provides for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to:

1. Improve watershed control of lands within the permit area and on adjacent lands, when compared to the watershed control which would exist were the area restored to the approximate original contour; and

2. Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including receational facilities.

(2) Criteria for approval. The cabinet may issue a permit for surface mining activities incorporating a variance from the requirements for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(a) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.

(b) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(c) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210 or 405 KAR 18:220, as appropriate.

(d) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:

1. There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges had the area been restored to approximate original contour, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws; or, there will be an increase in streamflow during times of the year when the stream is normally at low flow or dry conditions and such increase in streamflow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams; and

2. The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(e) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall show an understanding that the variance could not be granted without the surface owner's request.

(f) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 405 KAR 20:060, Section 3.

(g) All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 will be met by the proposed operations.

(3) If a variance is granted under this section:

(a) The requirements of 405 KAR 20:060, Section 3 shall be made a specific condition of the permit.

(b) The permit shall be specifically marked as containing a variance from approximate original contour.

(4) Periodic review.

(a) Any permits incorporating a variance issued under this section shall be reviewed by the cabinet to evaluate the progress and development of the mining activities, to establish that the permittee is proceeding in accordance with the terms of the variance:

1. Within the sixth month preceding the third year from the date of this issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit

term.

(b) If the permittee demonstrates to the cabinet at any of the times specified in paragraph (a) of this subsection that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, the review required at that time need not be held.

(5) Modifications of permit. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 7. Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Operations. (1) Applicability.

(a) This section applies to any permittee or permittees who conduct or intend to conduct combined surface mining activities and underground mining activities where compliance with the time frames for reclamation as specified in [contemporaneous reclamation as required by] 405 KAR 16:020, Section 2, is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operations for the surface mining activities can be completed.

(b) This section provides only for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(2) Application requirements. Any applicant who desires to obtain a variance under this section shall file with the cabinet complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans which:

(a) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular sections of KRS Chapter 350 and Title 405, Chapters 7 through 24 from which a variance is being sought;

(d) Show how the activities will comply with 405 KAR 16:010, Section 3 [405 KAR 20:020] and other applicable requirements of Title 405, Chapters 7 through 24;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(g) Show how temporary off-site storage of spoil will be conducted to comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6 [405 KAR 16:130].

(3) Criteria for approval. A permit incorporating a variance under this section may be issued by the cabinet if it first finds, in writing, upon the basis of a complete application filed in accordance with this section that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(b) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resources and will avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of Title 405, Chapters 7 through 24 and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(d) The surface area of surface mining activities proposed for the variance has [have] been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(e) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by KRS Chapter 350 and 405 KAR 16:020;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 16:010, Section 3 and other applicable requirements of this Title [405 KAR 20:020];

(g) Temporary [Provisions for] off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6 [405 KAR 16:130];

(h) Liability under the performance bond required to be filed by the applicant with the cabinet pursuant to Title 405, Chapter 10 will [shall] be for the duration of the underground mining activities and until all requirements of Title 405, Chapter 10 have been complied with; and

(i) The permit for the surface mining activities contains specific conditions:

1. Specifying [Delineating] the particular surface areas for which a variance is authorized; and

[2. Identifying the particular requirements of 405 KAR 20:020 which are to be complied with, in lieu of the otherwise applicable provisions of KRS Chapter 350 and Title 405, Chapter 16; and]

2. [3.] Providing a detailed schedule for reclamation in lieu of requirements of the time frames specified in 405 KAR 16:020, Section 2 [compliance with the particular requirements of 405 KAR 20:020 identified under subparagraph 2 of this paragraph].

(4) Periodic review. Variances granted under permits issued under this section shall be reviewed by the cabinet no later than three (3) years from the dates of issuance of the permit and any permit renewals.

Section 8. Coal Processing Plants [or Support Facilities] Not Located Within the Permit Area of a Specified Mine. (1) Applicability. This section applies to any person who operates or intends to operate coal processing plants [and associated support facilities] not within a

permit area of a specific mine, other than such plants which are located at the site of ultimate coal use. Notwithstanding the provisions of 405 KAR 7:015, the provisions of RAM #33, "Coal Processing Operations and Crushing and Loading Facilities," are null and void.

(2) Permit required. Any person who operates or intends to construct or operate such a coal processing plant [or support facility] shall [have] obtain[ed] a permit from the cabinet under Title 405, Chapters 7 through 24.

(3) Previously exempted operations. This subsection applies only to those coal processing plants subject to 405 KAR 20:070, Section 5.

(a) On or before February 1, 1986 [Within sixty (60) days of the date specified in subsection (6) of this section], all persons operating a coal processing plant who intend to operate after August 1, 1986 [beyond eight (8) months from the date specified in subsection (6) of this section,] shall file an initially complete (as defined in 405 KAR 8:010, Section 13(1)(a)) permit application under 405 KAR Chapters 7 through 24. No person may operate a coal processing plant after August 1, 1986 [beyond eight (8) months from the date specified in subsection (6) of this section] unless that operation is being conducted under a permit issued under 405 KAR Chapters 7 through 24, except that a person may continue to operate a coal processing plant after August 1, 1986 without a permit [beyond the eight (8) month deadline] if:

1. An initially complete permit application has been timely filed. "Timely filed" shall mean filed on or before February 1, 1986, [within sixty (60) calendar days of the date specified in subsection (6) of this section;] or if filed within that time but determined to be initially incomplete, resubmitted within fifteen (15) calendar days of being served notice by the cabinet that the application is initially incomplete. Such notice shall be served in accordance with 405 KAR 7:090, Section 6.

2. The cabinet has yet to issue or deny the permit; and

3. The person complies with the performance standards of 405 KAR 20:070.

(b) The applicant shall file a performance bond under 405 KAR Chapter 10 within sixty (60) calendar days of being served notice of the decision by the cabinet to issue the permit. Such notice shall be served in accordance with 405 KAR 7:090, Section 6. If the performance bond is not filed within that time the cabinet shall deny the permit application.

(c) Any time limits for cabinet action specified in 405 KAR 8:010 shall not apply to permit applications filed under this subsection; provided, however, the cabinet shall make every effort to timely review and issue or deny such permit applications prior to August 1, 1986 [within eight (8) months of the date specified in subsection (6) of this section].

[(3) Criteria for approval.]

(4) Application.

(a) Any application for a permit for operations covered by this section shall be in accordance with 405 KAR 8:030 and, as applicable, 405 KAR 8:050 and shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and drawings of the construction, operation, maintenance, reclamation and removal of the coal processing plants [and associated support facilities]. The plan shall demonstrate that those operations will be conducted in compliance with 405 KAR 20:070.

(b) For permit applications for operations subject to subsection (3) of this section, the requirements of 405 KAR 8:030, Section 21, and 405 KAR 8:050, Section 3, shall not apply to lands disturbed by the coal processing plants prior to December 1, 1985 [the date specified in subsection (6) of this section].

(c) Permit applications for operations subject to subsection (3) of this section, which were timely filed in accordance with subsection (3)(a)1 of this section, need not contain the information required under 405 KAR 8:030, Sections 12, 13, 14(3), and 15(4). Any such applicant failing to make a timely filing shall be required to submit this information.

(5) Criteria for approval. [(b)] No permit shall be issued for any operation covered by this section unless the cabinet finds, in writing, that, in addition to meeting all other applicable requirements of this chapter, the operations will be conducted in compliance with the requirements of 405 KAR 20:070.

[(6) Applicability of amendments to this section. These amendments to this section shall become applicable upon the effective date of the federal rulemaking setting aside KRS 350.060(22), but not before December 1, 1985.]

Section 9. Repeal of Regulation. 405 KAR 20:020, Concurrent surface and underground mining, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465

PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.

Section 1. General Requirements. (1) All surface mining activities shall be planned and conducted to minimize disturbance of [changes to] the [prevailing] hydrologic balance in both the permit area and adjacent areas, in order to:

[prevent long-term adverse changes in that balance that could result from those activities.]

(a) Prevent material damage to the hydrologic balance outside the permit area;

(b) Assure the protection or replacement of water rights; and

(c) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this regulation.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;

2. Diverting runoff;

3. Achieving quickly germinating and growing stands of temporary vegetation;

4. Regulating channel velocity of water;

5. Lining drainage channels with rock or vegetation;

6. Mulching;

7. Selectively placing and sealing acid-forming and toxic-forming materials; [and]

8. Selectively placing waste materials in bankfill areas; and [.]

9. Implementing sediment control measures in Section 2 of this regulation.

[(c) If the practices listed in paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this chapter.]

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 16:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 16:190[, Section 1];

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(g) Treating with chemicals; and [.]

(h) Using sedimentation ponds as required in 405 KAR 16:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials [Spoil]. Acid drainage and toxic drainage [from acid-forming and toxic-forming spoil into ground and surface water] shall be avoided by:

(1) Identifying and burying and/or treating, in accordance with 405 KAR 16:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated [Identifying, burying, and treating where necessary, spoil which the cabinet determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried];

(2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter [Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with 405 KAR 16:190, Section 3, and other measures as required by the cabinet]; and

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of the spoil may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Ground Water Protection and Recharge Capacity. In order to protect the

hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Ground water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

(2) Ground water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and excess spoil fills, so as to allow the movement of water to the ground water system.

[Section 5. Ground Water Protection. (1) Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.]

[(2) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbance shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.]

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Surface water quality shall be protected by handling earth materials, ground water discharges, and runoff in a manner that:

(a) Minimizes the formation of acidic or toxic drainage;

(b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and

(c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.

(2) If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 16:070, the operator shall [continue to] use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and

(3) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 405 KAR 8:030, Section 32(1) and (2).

[Section 6. Protection of Ground Water Recharge Capacity. Groundwater quality shall be protected by handling earth materials and runoff in a manner tht will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal processing waste and underground development waste disposal areas and fills, so as to allow the movement of water to the underground system.]

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 16:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 16:040. [(1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the cabinet. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the cabinet for that approval.]

[(2) Upon an approved transfer of a well, the transferee shall:]

[(a) Assume primary liability for damages to persons or property from the well;]

[(b) Plug the well when necessary, but in no case later than abandonment of the well; and]

[(c) Assume primary responsibility for compliance with 405 KAR 16:040 with respect to the well.]

[(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.]

Section 8. Water Rights and Replacement. Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted [affected] by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline geologic and hydrologic information required in 405 KAR 8:030, Sections 12 through 16 shall be used to determine the extent of the impact of mining upon ground water and surface water.

Section 9. Discharges [of Water] Into an Underground Mine. [Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the permittee demonstrates to the cabinet that the discharge:]

(1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will: [Will abate water pollution or otherwise eliminate public hazards resulting from surface mining activities; and]

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 16:070 for pH and total suspended solids, except that

the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and

(d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following [Will be discharged as a controlled flow, meeting the effluent limitations of 405 KAR 16:070 for pH and total suspended solids or settleable solids, except that the pH and total suspended solids or settleable solids limitations may be exceeded, if approved by the cabinet, and is limited to]:

(a) Coal processing waste;

(b) Fly ash from a coal-fired facility;

(c) Sludge from an acid mine drainage treatment facility;

(d) Flue gas desulfurization sludge;

(e) Inert materials used for stabilizing underground mines; [or]

(f) Underground mine development wastes; and

(g) Water.

[(3) Not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters. The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application;]

[(4) Minimizes disturbance to the hydrologic balance; and]

[(5) Meets with the approval of the MSHA.]

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining activities, unless the cabinet specifically authorizes surface mining activities closer to or through such a stream under the following conditions:

(a) Any temporary or permanent diversions shall comply with 405 KAR 16:080 and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the cabinet; and

(c) During and after the mining, the water quantity and quality of the stream shall not be adversely affected by the surface mining activities as determined by state and federal water quality standards.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 16:030.

Section 12. Discharges of Accumulated Water. (1) Any accumulated water to be removed from a pit, bench, or other disturbed area shall be pumped, siphoned, or otherwise conveyed in a controlled manner to a natural or constructed drainway as approved by the cabinet.

(2) Such accumulated water may be discharged from the permit area without treatment only if the untreated discharge meets the requirements of 405 KAR 16:070, Section 1(1)(g).

(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the cabinet.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:080. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.405, 350.420, 350.465

PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow ground water flow, ephemeral streams, and intermittent and perennial streams.

Section 1. General Requirements. (1) Surface flow from mined areas abandoned before May 3, 1978 and any flow from undisturbed or reclaimed areas, after meeting the criteria of 405 KAR 16:070 and 405 KAR 16:090 for siltation structure removal, may be diverted around the disturbed area and water treatment facilities by means of temporary or permanent diversions.

(2) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the cabinet under 405 KAR 16:060, Section 9.

(3) The design, construction, and maintenance of diversion ditches shall insure public health and safety, protect property, be stable, minimize adverse impacts to the hydrologic balance, and prevent additional contributions of suspended solids to streamflow and to runoff outside the permit area to the extent possible using the best technology currently available. The following criteria are to be incorporated in the design and construction of a diversion ditch:

(a) Freeboard shall be no less than three-tenths (0.3) foot. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the cabinet, the cabinet may require that the design freeboard be increased.

(b) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 16:130 and 405 KAR 16:190.

(c) Topsoil shall be handled in compliance with 405 KAR 16:050.

(d) Channel linings shall be used to prevent erosion of the ditch. The following criteria is to be used unless the cabinet specifies

otherwise:

1. All diversion ditches are to be fertilized, seeded, and mulched to comply with the requirements of 405 KAR 16:200 after the ditch is constructed.

2. Riprap shall be used when a diversion ditch is not located in solid rock or the design velocity is five (5) feet per second or greater for the peak discharge used in the design of the ditch. Material used for riprap shall be free of acid-forming material and toxic-forming material and shall comply with the durability requirements of 405 KAR 16:130, Section 1(6)(c)2, except that sand and gravel shall not be used.

(e) Side slopes shall be no steeper than 1h:4v for solid rock, 1h:1v for riprap lined, and 2h:1v for grass lined ditches.

(f) Diversion ditch design capacity shall comply with the provisions of this paragraph, except where a larger capacity is required by other regulations of 405 KAR Chapters 7 through 24 for specific types of diversions or where a larger capacity is required by the cabinet.

1. The channel of any diversion ditch which diverts runoff around a sediment control structure, water treatment facility, or impoundment, **excluding dugout structures,** shall be adequate to pass the peak discharge from the design storm for the hydraulic capacity of the sediment control structure, water treatment facility, or impoundment (i.e. if the impoundment is designed to pass the 100 year, twenty-four (24) hour storm event so shall the ditch). **This size requirement shall not apply if the hydraulic capacity of the sediment control structure, water treatment facility, or impoundment takes into account the entire area contributing drainage, as though the bypass diversion ditch did not exist.**

2. The channel of any diversion ditch which diverts runoff to a sediment control structure or water treatment facility shall be adequate, at a minimum, to pass the peak discharge of a ten (10) year, twenty-four (24) hour storm event.

3. The channel, bank, and flood plain configuration of any diversion ditch, which diverts a perennial or intermittent stream, shall be adequate to pass the peak discharge of a ten (10) year, twenty-four (24) hour storm event for temporary ditches and the 100 year, twenty-four (24) hour event for permanent ditches. However, the capacity of the channel itself shall be equal to or greater than the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

4. The channel of any other diversion ditch which diverts ephemeral streams or overland flow shall be adequate to pass the peak discharge of the two (2) year, twenty-four (24) hour storm for temporary ditches and the ten (10) year, twenty-four (24) hour storm for permanent ditches.

(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the cabinet.

(5) Diversions of perennial streams and [,] intermittent streams [and ditches classified under subsection (3)(f)1 of this section] shall be designed and certified by a registered professional engineer and after construction shall be inspected and certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans. **The certifications required by this subsection shall be made pursuant to 405 KAR 7:040, Section 10.**

(6) Diversion ditches shall be maintained to pass their respective design storms.

(7)(a) When no longer needed to achieve the purpose for which they were authorized, all temporary diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 16:050, Sections 4 and 5; 405 KAR 16:190; and 405 KAR 16:200. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(b) Each ephemeral stream channel affected by surface coal mining and reclamation operations shall be reclaimed or permanently diverted in a channel designed and constructed so as to restore or approximate the premining characteristics of the original stream channel (including natural riparian vegetation) to promote the recovery and enhancement of the aquatic habitats, except for situations in which a reach of a stream channel cannot be restored to such characteristics:

1. Because of the existence of an excess spoil fill, permanent stream-crossing, permanent impoundment, or coal mine waste disposal area constructed in accordance with 405 KAR 16:100, 405 KAR 16:130, 405 KAR 16:140, 405 KAR 16:160, and 405 KAR 16:220 as applicable; or

2. For areas affected by mountaintop removal, because such restoration is inconsistent with the requirements of 405 KAR 20:050.

Section 2. Diversions of Perennial and Intermittent Streams. (1) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:

(a) Are approved by the cabinet after making the findings called for in 405 KAR 16:060, Section 11(1);

(b) Comply with other requirements of 405 KAR Chapters 7 through 24; and

(c) Comply with applicable local, state, and federal statutes and regulations.

(2) When permanent diversions are constructed or stream channels restored, after temporary divisions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable **alignment** [meandering shape and gradient], as determined by the cabinet;

(c) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics; and

(d) Comply with 405 KAR 16:180.

(3) Where the cabinet approves the placement of a coal refuse pile, coal waste impoundment, or an excess spoil fill in a intermittent or perennial stream under 405 KAR 16:060, Section 11, and it is not practicable to comply with subsection (2) of this section, then the

diversion of the stream channel shall comply with the requirements for diversions set forth in the performance standards for those structures.

Section 3. Applicability of Amendments to This Regulation. (1) Except as provided in subsection (2) of this section, the amendments to this regulation shall apply to permits issued on or after July 1, 1986 [ninety (90) days after the effective date of these amendments]. Permittees conducting surface coal mining and reclamation operations under permits issued before that date shall comply with the requirements which preceded the amendments, the approved permit application and the conditions of permit issuance.

(2) The provisions of Section 1(3)(f)1 of this regulation shall apply on and after ninety (90) days after the effective date of these amendments to each surface coal mining and reclamation operation which includes an impoundment classified, pursuant to 405 KAR 7:040, Section 5, as a (B) or (C) structure. Permits issued before that date shall be revised as necessary.

[Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the cabinet as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:]

[(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the cabinet.]

[(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the cabinet. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the cabinet to prevent seepage or to provide stability.]

[(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.]

[(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the cabinet.]

[(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 16:050, Sections 4 and 5, 405 KAR 16:190, and 405 KAR 16:200.]

[(6) Diversion design shall incorporate the following:]

[(a) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of 405 KAR 16:130, Section 2(2)(d), except that sand and gravel shall not be used.]

[(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the cabinet, the design freeboard may be increased.]

[(c) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.]

[(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 16:130.]

[(e) Topsoil shall be handled in compliance with 405 KAR 16:050.]

[(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the cabinet.]

[Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:]

[(a) Are approved by the cabinet after making the findings called for in 405 KAR 16:060, Section 11(1);]

[(b) Comply with other requirements of Title 405, Chapters 16 through 20; and]

[(c) Comply with applicable local, state, and federal statutes and regulations.]

[(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:]

[(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the cabinet as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.]

[(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, or larger events specified by the

cabinet. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.]

[(3) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 16:050, Sections 4 and 5, 405 KAR 16:190, and 405 KAR 16:200. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.]

[(4) When permanent diversions are constructed or stream channels restored, after temporary diversions, the permittee shall:]

[(a) Restore, enhance where practicable, or maintain natural raparian vegetation on the banks of the stream;]

[(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the cabinet; and]

[(c) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.405, 350.410, 350.450, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for backfilling and grading, including requirements for highwall elimination, return to approximate original contour, timing of backfilling and grading, use of terraces, thick and thin overburden conditions, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading. Backfilling and grading shall be conducted in accordance with the requirements for contemporaneous reclamation as set forth in 405 KAR 16:020.

Section 2. General Backfilling and Grading Requirements. (1) [Method for backfilling and grading:

(a)] Except as provided in subsection (9) of this section, [specifically exempted in Title 405, Chapters 16 through 20,] all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:

(a) Eliminate all highwalls (except as otherwise provided in Section 7 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved pursuant to subsection (5) or (6) of this section); [, and to]

(b) Ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land; and

(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;

(d) [(b) Backfilled material shall be placed to] Minimize erosion and adverse effects on surface and ground water both on and off the site; [, minimize offsite effects,] and [to]

(e) Support the approved postmining land use.

[(c) Cut-and-fill terraces may be used only in those situations expressly identified in subsection (3) of this section.]

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 16:130, shall be returned to the excavated areas. [The final graded slopes shall not exceed slopes approved by the cabinet based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography.]

(3) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with 405 KAR 16:140, except that a long-term static safety factor of 1.3 shall be achieved.

(4) [(3)] On approval by the cabinet in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the cabinet as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the cabinet, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the

cabinet.

(5) [(4)] Small depressions may be constructed on backfilled areas, if the depressions [they]:

(a) Are needed [approved by the cabinet] to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;

(b) Do not restrict normal access; [and]

(c) Are not inappropriate substitutes for lower grades on the reclaimed lands;

(d) Are approved by the cabinet;

(e) Do not adversely affect the stability of the backfilled area; and

(f) Are not located on [in] steep-slope outslopes [areas].

(6) Impoundments [shall not be allowed] on backfilled areas may be approved, if [unless] the impoundments:

(a) Meet the applicable requirements of 405 KAR 16:060, Section 10 and 405 KAR 16:100;

(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;

(c) Are consistent with and suitable for the approved postmining land use;

(d) Are specifically approved by the cabinet in the permit application; and

(e) Are not located on [in] steep-slope outslopes [areas].

(7) [(5)] All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements [meet the provisions] of 405 KAR 20:060.

(8) [(6)] All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, and [or] placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for [re]placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.

(9) The postmining slope may vary from the approximate original contour when approval is obtained from the cabinet for:

(a) The provisions for thin overburden in Section 4 of this regulation;

(b) The provisions for thick overburden in Section 5 of this regulation;

(c) Mountaintop removal operations in accordance with 405 KAR 8:050, Section 4;

(d) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6; or

(e) Incomplete elimination of highwalls in previously mined areas in accordance with Section 7 of this regulation.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. [Covering Coal and Acid- and Toxic-forming Materials.] (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:

(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;

(b) Ensures compliance with 405 KAR 16:060;

(c) Prevents sustained combustion;

(d) Minimizes adverse impacts on plant growth and the approved postmining land use;

(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 16:200; and

(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 16:210.

(2) [(1)] Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.

(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.

(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:

1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of such measures shall be used, as necessary to ensure compliance with subsection (1) of this section; and

2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;

3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible

materials. Such contact may [shall] be minimized by the encasement of such materials in low-permeability substances and by the compaction and selective placement of such materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface and ground water and if feasible based on site conditions, the cabinet may allow [require that] acid-forming materials, toxic-forming materials, and combustible materials to be placed below the permanent water table.

(3) The cabinet shall require [specify] measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

[(a) The permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and noncombustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, or other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses.]

[(b) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from groundwater contact.]

[(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.]

[(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or groundwaters and wherever necessary to ensure the stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming or toxic-forming materials are covered.]

Section 4. Thin Overburden. (1) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 2 [1] of this regulation to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or such lesser slopes as the cabinet may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use;

(c) Transport, backfill, grade, and revegetate in accordance with 405 KAR 16:200, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(d) Transport, backfill, and grade, to ensure impoundments are constructed only where:

1. It has been demonstrated to the cabinet's satisfaction that all requirements of 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 have been met; and

2. The impoundments have been approved by the cabinet as suitable for the approved postmining land use and as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

Section 5. Thick Overburden. (1) The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each permit area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Section 2 [1] of this regulation to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(a) Transport, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(b) Transport, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with 405 KAR 16:130;

(c) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 405 KAR 16:060, 405 KAR 16:070, 405 KAR 16:080, 405 KAR 16:090, 405 KAR 16:100 and 405 KAR 16:110 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the cabinet as compatible with the prevailing land

uses in unmined areas surrounding the permit area;

(e) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) Meet the revegetation requirements of 405 KAR 16:200 for all disturbed areas.

Section 6. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and/or [or] replanted according to 405 KAR 16:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded and/or [or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation. [or] may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

Section 7. Remining Previously Mines Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 6 of this regulation except as provided in this section.

(2) Definitions.

[(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.]

[(b) "Modified highwall" means either:]

[1. The highwall resulting from remining where the pre-existing highwall face is removed; or]

[2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.]

(a) [(c)] "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) [(d)] "Previously mined area" means land which was disturbed or affected by coal mining operations that occurred prior to May 3, 1978, which was not reclaimed to the standards of this Title, and for which there is no continuing responsibility to reclaim to the standards of this Title. [disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.]

(d) [(e)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(e) [(f)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

[(3) Auger remining operations. The requirement within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:]

[(a) All reasonably available spoil shall be used to backfill the area, provided, however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.]

[(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

[(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.]

[(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.]

[(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.]

(3) [(4)] Variances to backfilling and grading requirements for remining operations [other than augering].

[(a)] The requirements within Section 2(1)(a) of this regulation to completely eliminate [the] highwalls shall [not] apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria: [that are not reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall. Such remining operations shall comply with the following:]

(a) [1.] All reasonably available spoil [generated by the remining operation] shall be used to backfill [and grade] the area.

(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (1.3 long-term static factor of safety), provided, however, that the exposed coal seam [mined] shall be covered in accordance with Section 3 of this regulation [with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material].

(c) [2.] Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench. [All

spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

(d) [3.] Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be [is] stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant. [If unexpected adverse physical impacts do occur, the permittee shall stabilize the highwall remnant.]

(e) [4.] Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or [and] safety or to the environment.

[(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:]

[1. All reasonably available spoil shall be used to backfill the area, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.]

[2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

[3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.]

[4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.]

[5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.420, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.

Section 1. General Requirements. (1) All underground mining activities shall be planned and conducted to minimize disturbance of [changes to] the [prevailing] hydrologic balance in both the permit area and adjacent areas, in order to: [prevent long term adverse changes in that balance that could result from those activities.]

(a) Prevent material damage to the hydrologic balance outside the permit area;

(b) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this regulation.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;
2. Diverting runoff;
3. Achieving quickly germinating and growing stands of temporary vegetation;
4. Regulating channel velocity of water;
5. Lining drainage channels with rock or vegetation;
6. Mulching;
7. Selectively placing and sealing acid-forming and toxic-forming materials;
8. Designing mines to prevent or control gravity drainage of acid waters;
9. Sealing;
10. Controlling subsidence; [and]
11. Preventing acid mine drainage; and
12. Implementing sediment control measures in Section 2 of this regulation.

[(c) If the practices listed at paragraph (b) of this subsection are not adequate to meet the requirements of this chapter, the permittee shall operate and maintain the necessary water treatment facilities for as long as treatment is

required under this chapter.]

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) Meet the requirements of 405 KAR 18:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 405 KAR 18:190;

(c) Retaining sediment within disturbed areas;

(d) Diverting runoff away from disturbed areas;

(e) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(g) Treating with chemicals; [and]

(h) Treating mine drainage in underground sumps; and

(i) Using sedimentation ponds as required in 405 KAR 18:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage [from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water] shall be avoided by:

(1) Identifying and burying and/or treating, in accordance with 405 KAR 18:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated [Identifying, burying, and treating, where necessary, waste and spoil which the cabinet determines, based on information in the permit application or other appropriate information, may be detrimental to vegetation or may adversely affect water quality if not treated or buried];

(2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter [Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with 405 KAR 18:190, Section 3, and other measures as required by the cabinet]; and

(3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of such materials may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Ground Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and ground water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

[Section 5. Underground Mine Entry and Access Discharges. (1) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.]

[(2) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (3) of this section, may be approved by the cabinet if it is demonstrated that:]

[(a)1. The discharge, without treatment, satisfies the water quality effluent limitations of 405 KAR 18:070 and all applicable state and federal water quality standards; and]

[2. That discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or]

[(b)1. The discharge is conveyed to a treatment facility in the permit area in accordance with 405 KAR 18:070, Section 1(1);]

[2. All water from the underground mine discharged from the treatment facility meets the effluent limitations of 405 KAR 18:070 and all other applicable state and federal statutes and regulations; and]

[3. Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.]

[(3) Notwithstanding anything to the contrary in subsections (1) and (2) of this section, for a drift mine first used after the date of applicability of this regulation and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in

such a manner as to prevent any gravity discharge from the mine.]

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and the following:

(1) Surface water quality shall be protected by handling earth materials, ground water discharges, and runoff in a manner that:

(a) Minimizes the formation of acidic or toxic drainage;

(b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and

(c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.

(2) If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 18:070, the operator shall [continue to] use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and

(3) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 405 KAR 8:040, Section 32(1) and (2).

Section 7. [6.] Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 18:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 18:040. [(1) An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the cabinet. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the cabinet for that approval.]

[(2) Upon an approved transfer of a well, the transferee shall:]

[(a) Assume primary liability for damages to persons or property from the well;]

[(b) Plug the well when necessary, but in no case later than abandonment of the well; and]

[(c) Assume primary responsibility for compliance with 405 KAR 18:040 with respect to the well.]

[(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection (2) of this section, until release of the bond or other equivalent guarantee required by Title 405, Chapter 10 for the area in which the well is located.]

Section 8. Gravity Discharges from Underground Mines. Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine.

(1) Gravity discharges of water from an underground mine, other than a drift mine subject to subsection (2) of this section, may be allowed by the cabinet if it is demonstrated that the untreated or treated discharge complies with the performance standards of this chapter and any additional KPDES permit requirements.

(2) Notwithstanding anything to the contrary in subsection (1) of this section, the surface entries and accesses of drift mines first used after May 18, 1982 and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

[(1) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and managed to prevent or control gravity discharge of water from the mine.]

[(2) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (3) of this section, may be approved by the cabinet, if it is demonstrated that:]

[(a)1. The discharge, without treatment, satisfies the water quality effluent limitations of 405 KAR 18:070 and all applicable state and federal water quality standards; and]

[2. That discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or]

[(b)1. The discharge is conveyed to a treatment facility in the permit area in accordance with 405 KAR 18:070, Section 1(1);]

[2. All water from the underground mine discharged from the treatment facility meets the effluent limitations of 405 KAR 18:070 and all other applicable state and federal statutes and regulations; and]

[3. Consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.]

[(c) The discharge meets any additional requirements in the KPDES permit.]

[(3) Notwithstanding anything to the contrary in subsections (1) and (2) of this section, for a drift mine first used after May 18, 1982 and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.]

Section 9. [7.] Discharges [of Water] Into an Underground Mine. [Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the permittee demonstrates to the cabinet that the discharge:]

(1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will: [Will abate water pollution or otherwise eliminate public hazards resulting from surface mining activities;]

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 18:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations

may be exceeded, if approved by the cabinet; and

(d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following: [Will be discharged as a controlled flow;]

(a) Coal processing waste;

(b) Underground mine development waste;

(c) Fly ash from a coal-fired facility;

(d) Sludge from an acid mine drainage treatment facility;

(e) Flue gas desulfurization sludge; [or]

(f) Inert materials used for stabilizing underground mines; and

(g) Water.

(3) Water from one (1) undergound mine may be diverted into other underground workings according to the requirements of this section and as approved in the permit. [Meets the effluent limitations of 405 KAR 16:070 for pH and total suspended solids or settleable solids, except that the pH and total suspended solids or settleable solids limitations may be exceeded, if approved by the cabinet, and is limited to]:

[(4) Will not cause or contribute to a violation of applicable water quality standards or effluent limitations due to the resulting discharge from the underground mines to surface waters (The most likely points of discharge to surface waters, if any, shall be located on a map as a part of the permit application);]

[(5) Minimizes disturbance to the hydrologic balance; and]

[(6) Meets with the approval of the MSHA.]

Section 10. [8.] Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. [9.] Stream Buffer Zones. (1) No surface area within 100 feet of an intermittent or perennial stream shall be disturbed by surface operations and facilities, unless the cabinet specifically authorizes underground mining activities closer to or through such a stream under the following conditions:

(a) Any temporary or permanent diversions shall comply with 405 KAR 18:080 and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the cabinet; and

(c) During and after the mining, the water quantity and quality of the stream shall not be adversely affected by the underground mining activities as determined by federal and state water quality standards.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 18:030.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Amended After Hearing)

405 KAR 18:080. Diversions.

RELATES TO: KRS 350.085, 350.100, 350.151, 350.405, 350.420, 350.465

PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.420, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow ground water flow, ephemeral streams, and intermittent and perennial streams.

Section 1. General Requirements. (1) Surface flow from mined areas abandoned before May 3, 1978 and any flow from undisturbed or reclaimed areas, after meeting the criteria of 405 KAR 18:070 and 405 KAR 18:090 for siltation structure removal, may be diverted around the disturbed area and water treatment facilities by means of temporary or permanent diversions.

(2) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the cabinet under 405 KAR 18:060, Section 9.

(3) The design, construction, and maintenance of diversion ditches shall insure public health and safety, protect property, be stable, minimize adverse impacts to the hydrologic balance, and prevent additional contributions of suspended solids to streamflow and to runoff outside the permit area to the extent possible using the best technology currently available. The following criteria are to be incorporated in the design and construction of a diversion ditch:

(a) Freeboard shall be no less than three-tenths (0.3) foot. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the cabinet, the cabinet may require that the design freeboard be increased.

(b) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 18:130 and 405 KAR 18:190.

(c) Topsoil shall be handled in compliance with 405 KAR 18:050.

(d) Channel linings shall be used to prevent erosion of the ditch. The following criteria is to be used unless the cabinet specifies otherwise:

1. All diversion ditches are to be fertilized, seeded, and mulched to comply with the requirements of 405 KAR 18:200 after the ditch is constructed.

2. Riprap shall be used when a diversion ditch is not located in solid rock or the design velocity is five (5) feet per second or greater for the peak discharge used in the design of the ditch. Material used for riprap shall be free of

acid-forming material and toxic-forming material and shall comply with the durability requirements of 405 KAR 18:130, Section 1(6)(c)2, except that sand and gravel shall not be used.

(e) Side slopes shall be no steeper than 1h:4v for solid rock, 1h:1v for riprap lined, and 2h:1v for grass lined ditches.

(f) Diversion ditch design capacity shall comply with the provisions of this paragraph, except where a larger capacity is required by other regulations of 405 KAR Chapters 7 through 24 for specific types of diversions or where a larger capacity is required by the cabinet.

1. The channel of any diversion ditch which diverts runoff around a sediment control structure, water treatment facility, or impoundment, excluding dugout structures, shall be adequate to pass the peak discharge from the design storm for the hydraulic capacity of the sediment control structure, water treatment facility, or impoundment (i.e. if the impoundment is designed to pass the 100 year, twenty-four (24) hour storm event so shall the ditch). This size requirement shall not apply if the hydraulic capacity of the sediment control structure, water treatment facility, or impoundment takes into account the entire area contributing drainage, as though the bypass diversion ditch did not exist.

2. The channel of any diversion ditch which diverts runoff to a sediment control structure or water treatment facility shall be adequate, at a minimum, to pass the peak discharge of a ten (10) year, twenty-four (24) hour storm event.

3. The channel, bank, and flood plain configuration of any diversion ditch, which diverts a perennial or intermittent stream, shall be adequate to pass the peak discharge of a ten (10) year, twenty-four (24) hour storm event for temporary ditches and the 100 year, twenty-four (24) hour event for permanent ditches. However, the capacity of the channel itself shall be equal to or greater than the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

4. The channel of any other diversion ditch which diverts ephemeral streams or overland flow shall be adequate to pass the peak discharge of the two (2) year, twenty-four (24) hour storm for temporary ditches and the ten (10) year, twenty-four (24) hour storm for permanent ditches.

(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the cabinet.

(5) Diversions of perennial streams and [,] intermittent streams [and ditches classified under subsection (3)(f)] of this section] shall be designed and certified by a registered professional engineer and after construction shall be inspected and certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans. The certifications required by this subsection shall be made pursuant to 405 KAR 7:040, Section 10.

(6) Diversion ditches shall be maintained to pass their respective design storms.

(7)(a) When no longer needed to achieve the purpose for which they were authorized, all temporary diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 18:050, Sections 4 and 5; 405 KAR 18:190; and 405 KAR 18:200. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(b) Each ephemeral stream channel affected by surface coal mining and reclamation operations shall be reclaimed or permanently diverted in a channel designed and constructed so as to restore or approximate the premining characteristics of the original stream channel (including natural riparian vegetation) to promote the recovery and enhancement of the aquatic habitats, except for situations in which a reach of a stream channel cannot be restored to such characteristics because of the existence of an excess spoil fill, permanent stream-crossing, permanent impoundment, or coal mine waste disposal area constructed in accordance with 405 KAR 18:100, 405 KAR 18:130, 405 KAR 18:140, 405 KAR 18:160, and 405 KAR 18:230 as applicable.

Section 2. Diversions of Perennial and Intermittent Streams. (1) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:

(a) Are approved by the cabinet after making the findings called for in 405 KAR 18:060, Section 11;

(b) Comply with other requirements of 405 KAR Chapters 7 through 24; and

(c) Comply with applicable local, state, and federal statutes and regulations.

(2) When permanent diversions are constructed or stream channels restored, after temporary divisions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable alignment [meandering shape and gradient], as determined by the cabinet;

(c) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics; and

(d) Comply with 405 KAR 18:180.

(3) Where the cabinet approves the placement of a coal refuse pile, coal waste impoundment, or an excess spoil fill in an intermittent or perennial stream under 405 KAR 18:060, Section 11, and it is not practicable to comply with subsection (2) of this section, then the diversion of the stream channel shall comply with the requirements for diversions set forth in the performance standards for those structures.

Section 3. Applicability of Amendments to This Regulation. (1) Except as provided in subsection (2) of this section, the amendments to this regulation shall apply to permits issued on or after July 1, 1986 [ninety (90) days after the effective date of these amendments]. Permittees conducting surface coal mining and reclamation operations under permits issued

before that date shall comply with the requirements which preceded the amendments, the approved permit application and the conditions of permit issuance.

(2) The provisions of Section 1(3)(f)1 shall apply on and after ninety (90) days after the effective date of these amendments to each surface coal mining and reclamation operation which includes an impoundment classified, pursuant to 405 KAR 7:040, Section 5, as a (B) or (C) structure. Permits issued before that date shall be revised as necessary.

[Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the cabinet as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming and toxic-forming materials. The following requirements shall be met for all diversions and all collection drains that are used to transport waters into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:]

[(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the cabinet.]

[(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the cabinet. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the cabinet to prevent seepage or to provide stability.]

[(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.]

[(4) No diversion shall be located so as to increase the potential for land slides and no diversion shall be constructed on existing slides unless approved by the cabinet.]

[(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 18:050, Sections 4 and 5, 405 KAR 18:190, and 405 KAR 18:200.]

[(6) Diversion design shall incorporate the following:]

[(a) Channel linings shall be designed using standard engineering practices to safely pass the design velocities. Riprap shall comply with the requirements of 405 KAR 18:130, Section 2(2)(d), except that sand and gravel shall not be used.]

[(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the cabinet, the design freeboard may be increased.]

[(c) Energy dissipators shall be installed, when necessary, at discharge points where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.]

[(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 405 KAR 18:130.]

[(e) Topsoil removed from the diversion excavations shall be handled in accordance with 405 KAR 18:050.]

[(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the cabinet under 405 KAR 18:060, Section 7.]

[Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions:]

[(a) Are approved by the cabinet after making the findings called for in 405 KAR 18:060, Section 9;]

[(b) Comply with other requirements of Title 405, Chapters 16 through 20; and]

[(c) Comply with applicable local, state, and federal statutes and regulations.]

[(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:]

[(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the cabinet as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.]

[(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, or larger events, as specified by the cabinet. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.]

[(3) When no longer needed to achieve the purpose for which they are authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 18:050, Sections 4 and 5, 405 KAR 18:190 and 405 KAR 18:200. At the time diversions are removed,

downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.]

[(4) When permanent diversions are constructed or stream channels restored after temporary diversions, the permittee shall:]

[(a) Restore, enhance where practicable, or maintain natural raparian vegetation on the banks of the stream;]

[(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the cabinet; and]

[(c) Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:190. Backfilling and grading.

RELATES TO: KRS 350.020, 350.093, 350.100, 350.151, 350.405, 350.410, 360.450, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for backfilling and grading of areas affected by surface operations, including requirements for backfilling and grading of face-up areas and other cut slopes and limited exemptions, timing of backfilling and grading, covering coal and acid and toxic materials, and regrading or stabilizing rills and gullies.

Section 1. Timing of Backfilling and Grading [General Requirements]. Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with a relative time-schedule approved by the cabinet in accordance with 405 KAR 18:020 [this regulation and a time schedule approved by the cabinet as a condition of the permit].

Section 2. General Backfilling and Grading Requirements. (1) [Method for backfilling and grading.

(a)] Except as provided in subsection (8) of this section [specifically exempted in Title 405, Chapters 16 through 20], all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, placed in a controlled manner, backfilled, compacted (where advisable to ensure stability or to prevent leaching of toxic materials), and graded to:

(a) Eliminate all highwalls (except as otherwise provided in Section 5 of this regulation), spoil piles, and depressions (excluding depressions and impoundments approved pursuant to subsection (4) or (5) of this section); [and to]

(b) Ensure a long-term static factor of safety of at least 1.3 for all portions of the reclaimed land;

(c) Achieve a postmining slope which does not exceed the angle of repose and which does prevent slides;

(d) [(b) Backfilled material shall be placed to] Minimize erosion and adverse effects on surface and ground water both on and off the site; [, minimize offsite effects,] and [to]

(e) Support the approved postmining land use.

[(2) Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. Except when necessary for sealing openings under 405 KAR 18:040, face-up areas and similar cut slopes need not be completely backfilled and graded as required by subsection (1) of this section if the cabinet determines that:]

[(a) No significant adverse environmental impacts will result; and]

[(b) Sufficient backfill material is not available without redisturbance of settled fills that have become stabilized and successfully revegetated.]

(2) Spoil, except excess spoil disposed of in accordance with 405 KAR 18:130, shall be returned to the excavated surface areas.

(3) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with 405 KAR 18:140, except that a long-term static safety factor of 1.3 shall be achieved.

(4) Small depressions may be constructed on backfilled areas, if the depressions:

(a) Are needed to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;

(b) Do not restrict normal access;

(c) Are not inappropriate substitutes for lower grades on the reclaimed lands;

(d) Are approved by the cabinet;

(e) Do not adversely affect the stability of the backfilled area; and

(f) Are not located on [in] steep-slope outslopes [areas].

(5) Impoundments [shall not be allowed] on backfilled areas may be approved, if [, unless] the impoundments:

(a) Meet the applicable requirements of 405 KAR 18:060, Section 10 and 405 KAR 18:100;

(b) Are demonstrated, to the satisfaction of the cabinet in the permit application, to have no adverse effect on the stability of the backfilled area;

(c) Are consistent with and suitable for the approved postmining land use;

(d) Are specifically approved by the cabinet in the permit application; and

(e) Are not located on [in] steep-slope outslopes [areas].

(6) All underground mining activities on slopes above twenty (20) degrees, or on lesser slopes that the cabinet defines as steep slopes, shall comply with the requirements of 405 KAR

20:060.

(7) [(3)] All final grading; preparation of overburden before replacement of topsoil, topsoil substitutes, and topsoil supplements; and placement of topsoil, topsoil substitutes, and topsoil supplements shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, and [or] placement shall be conducted in a manner which minimizes erosion and[, when appropriate,] provides a surface for [re]placement of topsoil, topsoil substitutes, and topsoil supplements which will minimize slippage.

(8) The postmining slope may vary from the approximate original contour when approval is obtained from the cabinet for:

(a) A variance from approximate original contour requirements in accordance with 405 KAR 8:050, Section 6;

(b) Incomplete elimination of highwalls in previously mined areas in accordance with Section 5 of this regulation; or

(c) Incomplete elimination of face-up areas and similar cut slopes which were created prior to May 3, 1978 in accordance with subsection (9) of this section.

(9) Any underground mining activity under permit as of the effective date of this amendment and having a face-up area or similar cut slope which was created prior to May 3, 1978 may comply with the backfilling and grading plan approved in the permit and shall not be required to completely eliminate the pre-existing face-up area or similar cut slope, if such elimination was not required in the approved permit.

Section 3. Disposal of Acid-forming, Toxic-forming, and Combustible Materials and Coverage of Coal Seams. [Covering Coal and Acid- and Toxic-forming Materials.] (1) General. Exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be handled; disposed of; treated; and covered with nontoxic-forming, nonacid-forming, and noncombustible materials in a manner which:

(a) Minimizes adverse impacts on surface and ground water, minimizes disturbances to the hydrologic balance, and prevents material damage to the hydrologic balance;

(b) Ensures compliance with 405 KAR 18:060;

(c) Prevents sustained combustion;

(d) Minimizes adverse impacts on plant growth and the approved postmining land use;

(e) Ensures that the affected area is capable of sustaining sufficient vegetation to meet the revegetation requirements of 405 KAR 18:200; and

(f) Ensures that the affected area is capable of meeting the postmining land use requirements of 405 KAR 18:220.

(2) [(1)] Coverage and treatment. All exposed coal seams, acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be covered and treated as necessary to neutralize toxicity, acidity, and combustibility, in order to ensure long-term and short-term compliance with subsection (1) of this section.

(a) All exposed coal seams shall be covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the coal seams by erosion.

(b) Excluding exposed coal seams, all acid-forming materials, toxic-forming materials, and combustible materials which are used, produced, or exposed during surface coal mining and reclamation operations shall be:

1. Selectively blended with nontoxic-forming, nonacid-forming, and noncombustible materials; treated; or selectively handled, or an appropriate combination of such measures shall be used, as necessary to ensure compliance with subsection (1) of this section; and

2. Covered with a minimum of four (4) feet of nontoxic-forming, nonacid-forming, and noncombustible materials. The cabinet shall require thicker amounts of cover, special compaction of cover, treatment, or other measures as necessary to ensure compliance with subsection (1) of this section and to prevent exposure of the toxic-forming, acid-forming, or combustible materials by erosion. The cabinet may approve lesser amounts of cover, or no cover (other than topsoil, topsoil substitutes, or topsoil supplements), if the applicant demonstrates, to the satisfaction of the cabinet in the permit application, that the lesser amounts are sufficient to ensure compliance with subsection (1) of this section and to maintain coverage of the toxic-forming, acid-forming, and combustible materials;

3. If required or approved by the cabinet, compacted and placed in an environment which minimizes the oxidation potential of the toxic-forming materials, acid-forming materials, and combustible materials; and

4. If required or approved by the cabinet, disposed so as to minimize surface and ground water contact with acid-forming materials, toxic-forming materials, and combustible materials. Such contact may [shall] be minimized by the encasement of such materials in low-permeability substances and by the compaction and selective placement of such materials in locations other than surface drainage courses, ground water recharge areas, or areas of significant ground water flow. As an alternative to minimizing contact with surface and ground water and if feasible based on site conditions, the cabinet may **allow** [require that] acid-forming materials, toxic-forming materials, and combustible materials be placed below the permanent water table.

(3) The cabinet shall **require** [specify] measures in addition to those identified in subsection (2) of this section if necessary to ensure protection of the environment or the health or safety of the public.

[(a) A permittee shall either cover, with a minimum of four (4) feet of the best available non-toxic and noncombustible material, or treat all exposed coal seams remaining after mining and all acid-forming, toxic-forming, combustible, and other materials identified by the cabinet as exposed, used or produced during mining. Cover or treatment shall be provided so

as to neutralize toxicity, acidity and combustibility, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land use.]

[(b) Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the cabinet shall specify thicker amounts of cover using non-toxic material.]

[(c) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.]

[(2) Stabilization. Backfilled materials shall be selectively transported, placed in a controlled manner, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to ensure the stability of backfilled materials. The method and design specifications of compacting material shall be approved by the cabinet before acid-forming and toxic-forming materials are covered.]

Section 4. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded and/or [or] replanted according to 405 KAR 18:200. The cabinet may specify that rills or gullies of lesser size be stabilized and the area reseeded and/or [or] replanted, if the rills or gullies are disruptive to the approved postmining land use or to the establishment of vegetation, [or] may result in additional erosion and sedimentation, or may cause or contribute to the violation of a water quality standard.

Section 5. Remining Previously Mined Areas. (1) General requirements. Remining operations on previously mined areas, including steep slope areas, that contain a pre-existing highwall shall comply with Sections 1 through 4 of this regulation except as provided in this section.

(2) Definitions.

[(a) "Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.]

[(b) "Modified highwall" means either:]

[1. The highwall resulting from remining where the pre-existing highwall face is removed; or]

[2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.]

(a) [(c)] "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(b) "Modified highwall" means either:

1. The highwall resulting from remining where the pre-existing highwall face is removed; or

2. The highwall resulting from remining where the pre-existing highwall is vertically enlarged.

(c) [(d)] "Previously mined area" means land which was disturbed or affected by coal mining operations that occurred prior to May 3, 1978, which was not reclaimed to the standards of this Title, and for which there is no continuing responsibility to reclaim to the standards of this Title. [disturbed or affected by earlier coal mining operations that was not reclaimed to the standards of this title, and there is no continuing responsibility to reclaim to such standards.]

(d) [(e)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(e) [(f)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

[(3) Auger remining operations. The requirements within Section 2(1) of this regulation to completely eliminate the highwall shall not apply to auger remining operations where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:]

[(a) All reasonably available spoil shall be used to backfill the area, provided, however, that in all cases the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material and all holes shall be sealed in accordance with 405 KAR 20:030.]

[(b) All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

[(c) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.]

[(d) Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.]

[(e) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.]

(3) [(4)] Variances to backfilling and grading requirements for remining operations [other than augering.]

[(a)] The requirements within Section 2(1)(a) of this regulation to completely eliminate [the] highwalls shall [not] apply to remining operations, except for situations in which the volume of all reasonably available spoil is demonstrated, to the satisfaction of the cabinet in the permit application, to be insufficient to completely backfill and eliminate the pre-existing or modified highwall. The highwall shall be eliminated to the maximum extent technically practicable in accordance with the following criteria: [that are not reasonably expected to cause an adverse physical impact on

the pre-existing or modified highwall. Such remining operations shall comply with the following:]

(a) [1.] All reasonably available spoil [generated by the remining operation] shall be used to backfill [and grade] the area.

(b) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability (1.3 long-term static factor of safety), provided, however, that the exposed coal seam [mined] shall be covered in accordance with Section 3 of this regulation [with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material].

(c) [2.] Spoil generated or handled by the remining operation shall not be placed on the fill section of any existing or new bench. [All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

(d) [3.] Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The permittee shall demonstrate, to the satisfaction of the cabinet in the permit application, that the postmining highwall remnant will be [is] stable. If the highwall remnant is determined by the cabinet to be unstable or potentially unstable, the permittee shall perform any corrective measures required by the cabinet to stabilize the highwall remnant. [If unexpected adverse physical impacts do occur, the permittee shall stabilize the highwall remnant.]

(e) [4.] Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health or [and] safety or to the environment.

[(b) Where the remining operation is reasonably expected to cause an adverse physical impact on the pre-existing or modified highwall, the requirement of Section 2(1) of this regulation to completely eliminate the highwall shall apply except where the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall. In such case, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:]

[1. All reasonably available spoil shall be used to backfill the area, provided, however, that the coal seam mined shall be covered with a minimum of four (4) feet of noncombustible, non-acid, non-toxic forming material.]

[2. All spoil generated or handled by the remining operation shall be retained on the solid portion of existing or new benches.]

[3. The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.]

[4. Any highwall remnant shall be made stable and not pose a hazard to public health and safety or to the environment. The permittee shall demonstrate to the satisfaction of the cabinet that the highwall remnant is stable.]

[5. Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.]

Section 6. Temporary Storage of Materials. (1) After excavation, materials to be used for backfilling in compliance with this regulation shall be returned, for backfilling purposes in accordance with this regulation, to a mined-out area within the permit area or shall be temporarily stored in designated storage areas designs of which have been provided in the permit application and thereby approved by the cabinet.

(2) Temporary storage areas shall be designed and constructed in accordance with the requirements of 405 KAR 18:130 or 405 KAR 18:140, depending on the type of material, except as specified in the following:

(a) If the temporary storage area is to exist for six (6) months or longer, the storage area shall be protected by establishment of an effective cover of nonnoxious, quick-growing, annual and perennial plants seeded or planted during the first normal seeding or planting period following placement of the fill material and re-sown as necessary thereafter.

(b) Topsoil, topsoil substitute, and topsoil supplement materials to be used in final reclamation of the temporary storage area shall either be stockpiled in accordance with 405 KAR 18:050, Section 3(1) through (3) or temporarily redistributed on areas in accordance with 405 KAR 18:050, Section 3(4). The applicant shall submit, in the permit application, a discussion from a qualified soil scientist or qualified agronomist which indicates, to the satisfaction of the cabinet, that the topsoil stockpile or temporary redistribution plan will minimize adverse effects on the quality and quantity of the topsoil, topsoil substitute, and topsoil supplement materials.

(3) Fills designed and constructed in accordance with this section may be retained as permanent structures if:

(a) The cabinet approves a permit revision submitted in accordance with 405 KAR 8:010, Section 20 for retention of the fill as a permanent structure and for the use of alternate materials to backfill areas and return the disturbed areas to their approximate original contour, in accordance with the requirements of this regulation;

(b) Topsoil, topsoil substitute, and topsoil supplement materials are redistributed on the fill in accordance with 405 KAR 18:050;

(c) The fill is revegetated and reclaimed in accordance with 405 KAR 18:200, 405 KAR 18:220, and all other applicable requirements of KRS Chapter 350 and this Title; and

(d) The borrow area or other area from which the alternate backfill material is obtained is permitted under a valid permit from DSMRE and is reclaimed in accordance with the requirements of KRS Chapter 350 and this Title.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Amended After Hearing)

405 KAR 20:040. Prime farmland.

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.100, 350.450, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This regulation specifies special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This regulation sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities. (1) The federal regulations at 30 CFR Part 823 require that the U.S. Soil Conservation Service (SCS) within each state establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(2) The federal regulations at 30 CFR Part 823 require that the cabinet use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities. Therefore, the following document is incorporated herein by reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland (544)," 1985. Copies may be obtained from the Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.

Section 3. [1.] Applicability. The requirements of this regulation, including the SCS prime farmland specifications of Section 2 of this regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

[Section 2. Soil Removal. (1) The approximate boundaries of each prime farmland soil mapping unit shall be marked with flags or other suitable markers at the time of submission of the preliminary application and shall remain marked to aid soil removal operations. Where the cabinet has approved combining of subsoils from different soil mapping units in the reclamation plan, then only the combined areas need be marked.]

[(2) Soil removal shall be conducted within driest periods of the year as approved by the cabinet in the reclamation plan and shall be conducted within soil moisture ranges that will minimize compaction.]

[(3) Soil removal shall be conducted with equipment that minimizes compaction and allows effective segregation of soil layers.]

[(4) Soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.]

[(5)(a) The topsoil shall be removed as a separate layer and, if not utilized immediately, placed in stockpiles separate from non-prime farmland topsoil, other soil horizons, spoil, and all other excavated materials. Topsoil from all prime farmland soils in the permit area can be aggregated when removed, stockpiled, and reconstructed.]

[(b) If the topsoil is less than six (6) inches in depth, a six (6) inch layer that includes the topsoil and a portion of the B horizon shall be removed as a separate layer.]

[(6)(a) Subsoil materials shall be removed to a sufficient depth to have enough material (considering compaction and losses during handling) to reconstruct forty-eight (48) inches in depth of soil, including topsoil and subsoils. The cabinet may require a greater depth if determined to be necessary to restore the original soil productive capacity.]

[(b) The forty-eight (48) inch depth requirement shall be reduced to the depth in the natural soil of a:]

[1. Bedrock horizon, or]

[2. Fragipan horizon which has been demonstrated, to the satisfaction of the cabinet in the permit application, to contribute little or nothing to the productive capacity of the soil. This contribution must be less than 0.06 inches per inch of available water capacity to qualify for such exclusions.]

[(c) Where the minimum depth requirement has been reduced under paragraph (b) of this subsection due to the existence of a fragipan horizon, the cabinet may approve removal of the fragipan and/or other horizons in order to increase the depth of reconstructed soil and if mixing these materials with the overlying horizons would improve the productive capacity of the reconstructed soil as compared to compliance with minimum depth requirements.]

[(d) Bedrock horizons and fragipan horizons are designated in soil profiles by horizon symbols containing the letters "R" and "x" respectively.]

[(e) Where a permit issued prior to the effective date of this amendment to this regulation allowed a fragipan to be considered as a root inhibiting horizon, the permittee shall be allowed to continue to treat such a fragipan as a root inhibiting horizon for all prime farmland soils removed prior to ninety (90) days after the effective date of these amendments. For such permits, soil removal operations on and after ninety (90) days from the effective date of these amendments shall comply with paragraph (b)2 of this subsection and the permit shall be revised as necessary.]

[(7)(a) The B and C horizons in combination (or portion thereof necessary to meet the requirements of subsection (6) of this section) shall be removed as a separate layer and, if not utilized immediately, placed in stockpiles separate from topsoils, other soil horizons, spoil and all other excavated materials. Except as provided in subsection (8) of this section, B and C horizon material from different prime farmland soil mapping units shall be separately removed, stockpiled, and reconstructed.]

[(b) The cabinet, in consultation with the SCS, may require separation of the B and C horizons during removal, stockpiling, and reconstruction when the B and C horizons have constrasting properties and, in the judgment of

the cabinet, mixing of the B and C horizons would likely reduce the productive capacity of the reconstucted soil.]

[(8) The cabinet, in consultation with the SCS, may approve combining of subsoil horizons from different prime farmland soil mapping units within the permit area based upon the degree of contrast in soil properties such as texture and pH and the degree of difference in crop yields from the different unmined soil mapping units. Where a permit issued prior to the effective date of this amendment to this regulation allowed such combining of subsoils, no permit revison shall be required and the permittee may continue to combine subsoils.]

[(9) The cabinet, in consultation with the SCS, may approve topsoil or subsoil substitutes or supplements where use of such will create a final soil having a greater productive capacity than that which exists prior to mining. This approval shall be based upon a demonstration by the applicant as required in 405 KAR 8:050, Section 3(2)(b)6. The approved substitute or supplement shall be separately removed, stockpiled, and replaced in the same manner as required for original soil horizons.]

[Section 3. Stockpiling. (1) Stockpile sites shall be located in the permit area on areas that are not subject to flooding or slippage and where the stockpiles will not be disturbed or subject to excessive erosion or contamination. Prime farmland soil areas shall be avoided as stockpile sites where feasible.]

[(2) Stockpile areas shall be prepared by removing all woody vegetation that may interfere with placement or removal or stockpiled soil. The topsoil shall be removed from the area except where the site is prime farmland and is to be used to store prime farmland topsoil.]

[(3) If stockpiles are left in place for more than thirty (30) days, the stockpile shall be protected from erosion and ponding of water by appropriate drainage and erosion control measures, approved by the cabinet, such as are contained in guidelines published in the Soil Conservation Service Technical Guide. A vegetative cover shall be established in accordance with 405 KAR 16:050, Section 3(2).]

[(4) Where stockpiles are located on prime farmland soils, after removal of the stockpile the underlying soil horizons shall be ripped and chiseled during dry conditions to reduce compaction.]

Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b) Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

[Section 4. Soil Replacement and Reconstruction. (1) Prior to replacement of soil materials, the backfilled spoil shall be graded to uniform slopes so that, after the soil horizons have been replaced, the requirements of subsection (10) of this section can be met with minimal regrading of the soil material.]

[(2) Each soil mapping unit shall be separately reconstructed except as provided in Section 2(8) of this regulation. Soils may be reconstructed in other than the original location as approved in the permit provided that the ownership of the prime farmland soil is not changed.]

[(3) Soil replacement shall be conducted with equipment and replacement techniques that will minimize compaction. Equipment operation patterns shall be designed to minimize traffic on soil material.]

[(4) Replacement and ripping and chiseling shall be conducted within soil moisture ranges that will minimize compaction.]

[(5) After grading the backfilled spoil, the subsoil horizons or substitute materials removed under Section 2 shall be replaced. All traffic areas shall be ripped or chiseled prior to replacement of the next layer of material, unless deep-ripping methods approved by the cabinet will achieve equivalent results. Where the B and C horizons have been separated during removal under Section 2, then the C horizon shall be separately replaced prior to replacement of the B horizon.]

[(6) After replacing the subsoil horizons or substitute materials, the topsoil horizon or substitute material removed under Section 2 shall be replaced. All traffic areas shall be ripped or chiseled.]

[(7) The minimum depth of reconstructed soil shall be forty-eight (48) inches, or a lesser or greater depth as specifically approved or required in the permit in accordance with Section 2(6) of this regulation. The reconstructed topsoil horizon (or substitute material) shall equal or exceed the thickness of the original topsoil horizon. Soil horizons shall be reconstructed to uniform depths.]

[(8) Texture and pH of the reconstructed soil horizons shall be as favorable for plant growth or better than comparable horizons of the unmined soil considering mixtures of horizons or approved substitute soil materials or supplements.]

[(9) Bulk density.]

[(a) Except as provided in paragraph (b) of this subsection, each permittee shall comply with either subparagraph 1 or 2 of this paragraph.]

[1. The average bulk density of each ten (10) inch layer of reconstructed soil shall not exceed 1.65 g/cc. However, Phase I bond release may be granted where density exceeds the requirements of this subparagraph upon demonstrating that soil productivity has been restored under Section 5 of this regulation.]

[2. Porosity and density of the reconstructed soil shall permit penetration of roots of the crops commonly produced on the surrounding prime farmland comparable to the penetration on nonmined prime farmland. This shall be demonstrated by growing deep-rooted crops approved by the cabinet in order to directly observe root penetration by digging observation pits. Factors to be considered shall include, but not necessarily be limited to, evaluation of the presence or absence of:]

[a. Very firm, massive soil physical conditions in any layer above the required rooting-medium depth that has half or more of the soil volume in masses ten (10) inches or more in diameter that are not effectively exploited by the root systems;]

[b. Roots restricted to a depth less than the required rooting-medium depth;]

[c. Confinement of roots to mats in desiccation cracks; and]

[d. Flattened roots.]

[(b) The provisions of paragraph (a) of this subsection shall only apply to prime farmland areas where soil removal occurs on or after the effective date of this amendment.]

[(10) Final grading of the reconstructed soil shall provide uniform slopes and adequate surface drainage so that ponding does not occur after settling. The average slope shall be within the slope range of the unmined prime farmland map units and shall not exceed six (6) percent nor be less than one (1) percent. Appropriate erosion control measures shall be implemented as approved in the reclamation plan such as are contained in guidelines published in the Soil Conservation Service Technical Guide.]

[(11) Each reconstructed prime farmland soil mapping unit boundary shall be permanently marked in the field until final bond release. Where the cabinet has approved combining of subsoils from different soil mapping units in the reclamation plan, then only the combined areas need be marked.]

[(12) Phase I bond release shall not be granted until it is demonstrated to the cabinet's satisfaction that the requirements of this section have been met.]

Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. [5.] Revegetation and Restoration of Soil Productivity. (1) Requirements for revegetation and demonstration of successful restoration of soil productivity are set forth in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Surface Mining Reclamation and Enforcement in consultation with the U.S. Soil Conservation Service, June 1985. This document is incorporated herein by reference. Copies may be obtained from the department.

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

(3) Irrespective of the provisions of 405 KAR 1:005, this section shall also apply to prime farmland mined under the interim regulatory program under 405 KAR 1:250.

[Section 1. Special Requirements. Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:]

[(1) A permit shall be obtained for those operations under 405 KAR 8:050, Section 3.]

[(2) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 2 of this regulation and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the cabinet shall specify methods to control erosion of exposed overburden.]

[(3) Soil productivity shall be restored to support equivalent or higher levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. Successful restoration of soil productivity shall be demonstrated by either:]

[(a) A soil survey; or]

[(b) A comparison of actual average annual crop production on the restored area for the three (3) years prior to bond release, with the actual average annual production of similar crops in the same time period on nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. The comparison may include appropriate adjustments for weather induced variability in the average annual crop production.]

[Section 2. Soil Removal. (1) Surface coal mining and reclamation operations on prime farmland shall be conducted to:]

[(a) Separately remove the entire A horizon or

other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.]

[(b) Separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.]

[(c) Separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.]

[(2) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Section 4(1) of this regulation.]

[Section 3. Soil Stockpiling. If not utilized immediately, the A horizon or other suitable soil materials specified in Section 2(1)(a) of this regulation and the B horizon or other suitable soil materials specified in Section 2(1)(b) and (c) of this regulation shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than thirty (30) days shall meet the requirements of 405 KAR 16:050, Section 3 or 405 KAR 18:050, Section 3.]

[Section 4. Soil Replacement. Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:]

[(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The cabinet shall specify a depth greater than forty-eight (48) inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.]

[(2) Replace soil material only on land which has been first returned to final grade and scarified according to 405 KAR 16:190, Sections 1 through 5 or 405 KAR 18:190, Sections 1 through 3, unless site-specific evidence is provided and approved by the cabinet showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.]

[(3) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction.]

[(4) Replace the B horizon or other suitable material specified in Section 2(1)(b) and (c) of this regulation to the thickness needed to meet the requirements of subsection (1) of this section.]

[(5) Replace the A horizon or other suitable soil materials specified in Section 2(1)(a) of this regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in 405 KAR 8:050, Section 3(2)(a), and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.]

[(6) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.]

[Section 5. Revegetation. Each permittee who conducts surface coal mining and reclamation operations on prime farmland shall meet the revegetation requirements of this section during reclamation. Following soil replacement, the permittee shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the cabinet under 405 KAR 8:050, Section 3, and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 405 KAR 16:200, Sections 3 and 4, or 405 KAR 18:200, Sections 3 and 4 shall be met.]

[Section 6. Exemption. The cabinet shall exempt from the requirements of this regulation those surface facilities at underground mines which are actively used over extended periods of time and are determined by the cabinet to affect a minimal amount of land.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 20:070. Offsite coal processing plants [and support facilities].

RELATES TO: KRS 350.010, 350.151, 350.465
PURSUANT TO: KRS Chapter 13A, 350.028, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards for all surface coal mining and reclamation operations. This regulation sets forth certain performance standards for offsite coal processing plants [and support facilities].

Section 1. Applicability. This regulation establishes performance standards for coal processing plants that are not located within the permit area for a specific mine. This regulation shall not apply to coal processing plants which are located at the site of ultimate coal use.

Section 2. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at coal processing plants shall comply with the provisions of 405 KAR Chapter 16 and 405 KAR 20:040, except as provided in this

section and Section 5 of this regulation.

(1) Those provisions of 405 KAR 16:060 related to stream buffer zones shall not apply except that the findings required for approval of a stream buffer zone variance shall apply to any proposal to divert an intermittent or perennial stream.

(2) 405 KAR 16:010, Section 2, coal recovery, shall not apply.

(3) 405 KAR 16:010, Section 4, slide and erosion barriers, and Section 5, slides, shall not apply.

(4) 405 KAR 18:020 shall apply in lieu of 405 KAR 16:020.

(5) 405 KAR 16:040, casing and sealing of drilled holes, shall not apply.

(6) 405 KAR 16:120, use of explosives, shall not apply.

(7) 405 KAR 16:190, Section 5, thick overburden, shall not apply.

(8) 405 KAR 16:250, Section 2(2), minimize damage, destruction or disruption of utility services, shall not apply.

(9) 405 KAR 20:060, steep slopes, shall not apply.

Section 3. Nearby Underground Mining Activities. Adverse effects upon, or resulting from, nearby underground mining activities shall be minimized by appropriate measures, including but not limited to, compliance with 405 KAR 16:010, Section 3.

Section 4. Water Supply Replacement. Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, when the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the coal processing plant activities.

Section 5. Previously Exempted Operations. Those coal processing plants in existence on December 1, 1985 [the date specified in Section 6 of this regulation] which had been [were] previously exempted from the requirements of 405 KAR Chapters 7 through 24 by the provisions of KRS 350.060(22) and which became [become] subject to the provisions of this regulation on December 1, 1985 [upon the date specified in Section 6 of this regulation,] shall comply with all provisions of Sections 1 through 4 of this regulation, except as provided in this section.

(1) 405 KAR 16:010, Section 3, shall not apply to areas disturbed prior to December 1, 1985 [the date specified in Section 6 of this regulation].

(2) For surface areas that are without suitable topsoil, 405 KAR 16:050, Section 1(3) shall apply.

(3) The requirements of 405 KAR 16:070, Section 1(1)(a) shall not apply until final action on the permit application by the cabinet and the sedimentation pond or other treatment facility design has been approved by the cabinet or the exemption provided by 405 KAR 16:070, Section 1(1)(c) has been granted. The cabinet, as a condition of the permit, may approve a reasonable time to construct or modify water treatment facilities.

(4) Any coal processing plant in existence on May 3, 1978, may comply with the backfilling and grading requirements of 405 KAR 16:190, Section 7.

(5) 405 KAR 20:040, prime farmland, shall not apply to any prime farmland disturbed prior to December 1, 1985 [the date specified in Section 6 of this regulation].

(6) The ground water monitoring requirements of 405 KAR 16:110 shall not apply until final action on the permit application by the cabinet and the ground water monitoring plan is approved.

[Section 6. Applicability of Amendments to this Regulation. These amendments shall become applicable upon the effective date of the federal rulemaking setting aside KRS 350.060(22), but not before December 1, 1985.]

[Section 1. Applicability. Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with 405 KAR 8:050 to conduct those operations and comply with Section 2.]

[Section 2. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this regulation shall comply with the following:]

[(1) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with 405 KAR 18:030.]

[(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 405 KAR 18:230 and 405 KAR 18:260.]

[(3) Any stream or channel realignment shall comply with 405 KAR 18:080, Section 2.]

[(4) If required by the cabinet, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with 405 KAR 18:060, Section 2 and 405 KAR 18:090, and all discharges from these areas shall meet the requirements of 405 KAR 18:060, Section 1 and 405 KAR 18:070 and any other applicable state or federal law.]

[(5) Permanent impoundments associated with coal processing plants shall meet the requirements of 405 KAR 18:100 and 405 KAR 18:060, Section 8. Dams constructed of or impounding coal processing waste shall comply with 405 KAR 18:160.]

[(6) Use of water wells shall comply with 405 KAR 18:060, Section 6.]

[(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with 405 KAR 18:140, 405 KAR 18:150 and 405 KAR 18:130.]

[(8) Discharge structures for diversions and sediment control structures shall comply with 405 KAR 18:060, Section 3.]

[(9) Air pollution control measures associated with fugitive dust emissions shall comply with 405 KAR 18:170.]

[(10) Fish, wildlife and related environmental values shall be protected in accordance with 405 KAR 18:180.]

[(11) Slide areas and other surface areas shall comply with 405 KAR 18:010, Section 3.]

[(12) Adverse effects upon or resulting from

nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 405 KAR 18:060, Section 8.]

[(13) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with 405 KAR 18:060, Section 9, 405 KAR 18:190, 405 KAR 18:200, 405 KAR 18:220, and 405 KAR 18:010, Sections 4 and 5.]

[(14) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Title 405, Chapter 18.]

[(15) Any coal processing plant or associated structures located on prime farmland shall meet the requirements of 405 KAR 20:040.]

[(16) Any permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the operation of the coal processing plant or support facility.]

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: January 13, 1986
FILED WITH LRC: January 14, 1986 at noon

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

704 KAR 4:010. Physical education.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. This regulation implements that duty relative to health and physical educuation instruction.

Section 1. Elementary and secondary physical education programs or courses shall follow the descriptions and requirements recorded in the physical education section of the "Program of Studies for Kentucky Schools, Grades K-12," as adopted in 704 KAR 3:304, and in the minimum unit requirements for high school graduation set forth in 704 KAR 3:305.

Section 2. (1) A local board of education may authorize a child whose parents or guardian present a certificate from a licensed physician to the effect that because of the child's physical condition, participation in the required one-half (1/2) unit physical education course in high school is not in the best interest of the child, to substitute a physical education course which is within the capabilities of the child as specified by the child's physician.

(2)(a) A local board of education is authorized to exempt any child from the graduation requirements for physical education when the local board receives an affidavit from the parents of the child and the pastor of the church certifying that the child is a member of the [a nationally recognized and established] church or religious denomination, the teachings of which are opposed to the physical education curriculum or attire. The affidavit shall identify the church tenet giving rise to such conscientiously held opposition, and any exemption hereunder shall not reduce the total number of credits necessary for graduation under 704 KAR 3:305.

(b) The local school district may, in the alternative, maintain the requirement of physical education for graduation, by allowing for more modest dress or classes segregated by sex for those students having conscientious religious objections if such will reasonably accommodate such objections.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 8, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.

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

704 KAR 7:020. Counselor; criteria and duties.

RELATES TO: KRS 157.360
PURSUANT TO: KRS 156.070, 157.320
NECESSITY AND FUNCTION: KRS 157.360 requires the Superintendent of Public Instruction to allot to local school districts as part of the Foundation Program, classroom units for administrative and special instructional services; and 704 KAR 3:010 allows guidance counselor units as a form of ASIS units. This regulation is necessary to determine criteria for employment of counselor personnel in local schools and directions for appropriate functions.

Section 1. (1) Accreditation standards shall be the criterion for employment of counselors. Counselor units shall be considered on the basis of a minimum ratio of one (1) counselor unit for each 300 pupils in a school or schools served by the counselor. The required ratio shall be in accordance with accreditation standards.

(2) The scope of the school counselor's responsibility begins with the student's entrance into educational programs and concludes with efforts to affect successful transition from school to work or higher education.

(3) The school counselor shall work with all students individually and in groups, providing developmental, preventive and social/emotional, and physical needs, including programs to identify and address the needs of high risk students and dropouts.

(4) All counselors shall exercise their best efforts to provide direct services to students to help them do the following: develop a positive attitude toward self, others, and school; make decisions; recognize the importance of good attendance and work habits; see the value of education; realize the relationship between school and work; abstain from drug and alcohol use; cope with personal problems; recognize the need for self-discipline; and

contribute positively to the school climate.

(5) The goal of the counselor shall be to assist students in achieving their potential by helping them gain the most from their educational experiences. In achieving this goal, the counselor shall provide continuing services that include counseling, information, consultation, coordination, program selection, and referral to students, parents, teachers, and administrators.

(6) The counselor's duties shall be determined as follows: School counselors shall spend at least seventy-five (75) percent of their work time in activities that provide for direct guidance and counseling services with students, parents, teachers, and administrators. The activities shall include:

(a) Individual and group guidance and counseling services - provide individual and group counseling and guidance activities in the areas of development, prevention, and crisis situations for students and parents.

(b) Information services - provide information for use in exploring and making decisions about educational, career, vocational, personal-social, and orientation issues.

(c) Consultation services - confer with parents, teachers, administrators, and community resource people in developing programs or activities to address personal, social, or instructional needs of students.

(d) Appraisal services - assist in the collection, maintenance, dissemination, and interpretation of information based on individual intellectual assessments, group tests, student records, individual assessments, observations, and other methods enabling parents, students, teachers and other support professionals to provide students with appropriate instructional programs.

(e) Coordination services - provide leadership, assist in plan development, and orchestrate the implementation of guidance activities for use by parents, teachers, administrators, and the community.

(f) Program selection services - assist in placing students in appropriate instructional, vocational, and career programs.

(g) Referral services - use local and state resources and agencies that provide specialized services to students and parents.

(7) School counselors shall spend **approximately** [no more than] twenty (20) percent of their work time in activities aimed at planning and implementing the guidance and counseling program. These activities shall include, but are not limited to:

(a) Developing the annual Guidance Plan and evaluating the effectiveness of the guidance program and activities.

(b) Coordinating the maintenance of guidance records.

(c) Developing and coordinating a planned and continuous public relations program.

(d) Maintaining professional standards, skills, and competencies by attending courses, workshops, conferences, serving in professional organizations, and reading professional literature.

(e) Conducting research and follow-up studies that help evaluate and improve guidance programs in the school.

(8) School counselors shall spend approximately [no more than] five (5) percent of their work time in activities not defined in this regulation; however, those activities should be consistent with the counselor's role.

(9) The counselor's duties shall be verified by the guidance plan of the school in which the counselor is to function and through the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle, and Secondary Schools.

(10) An evaluation of the appropriateness and effectiveness of each district's counseling services will be included in the district's accreditation.

Section 2. [(1) The counselor's duties shall be determined by the guidance plan of the school in which the counselor is to function.]

(1) [(2)] Effective until September 1, 1987, persons certified and employed as school guidance counselors are recognized as qualified examiners for the purpose of administering, scoring, and interpreting individual intellectual assessments of students in the public schools of the Commonwealth, as such intellectual assessments may be deemed necessary or advisable by local school districts, provided the local superintendent of schools appropriately determines a guidance counselor performing such duties meets the following requirements:

(a) The counselor has a minimum of three (3) hours of graduate course work in individual intellectual assessment;

(b) The counselor has had experiences in test administration, interpretation, and report writing under supervision and administers only those tests which were a part of the instruction;

(c) The counselor has had experiences in the identification and placement process for exceptional children; and

(d) The counselor has a job description and guidance plan which clearly state the assignment of individual intellectual assessment responsibilities on file with the Division of Student Services, Department of Education.

(2) [(3)] A letter from the local superintendent must be submitted to the Division of Student Services prior to December 31, 1985, verifying that the above requirements relative to administering, scoring, and interpreting individual intellectual assessments of students have been met.

(3) [(4)] From January 1, 1986, to September 1, 1987, no counselor may administer, score or interpret individual intellectual assessments, unless a letter of verification is on file with the Department of Education.

Section 3. On and after September 1, 1987, in order to be qualified to administer, score, or interpret individual intellectual assessments of students in the public schools of the Commonwealth, guidance counselors holding the verification as set forth in Section 2 of this regulation for the 1986-87 school year must, prior to September 1, 1987, satisfactorily complete appropriate requirements prescribed by the Counsel on Teacher Education and Certification and approved by the State Board of Education in order to receive a certificate endorsement for thereafter continuing the administration and interpretation of intelligence assessments. After September 1, 1987, in order to administer, score and interpret intelligence assessments, guidance

counselors not so verified for the 1986-87 school year must complete a course of study as prescribed by the Counsel on Teacher Education and Certification and approved by the State Board of Education and receive a certificate endorsement for the administration and interpretation of intellectual assessments, in order to be recognized as a qualified examiner for such purpose.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 8, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amended After Hearing)

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.

(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:

(1) "Commission" means the Public Service Commission.

(2) "Utility" means a [n energy] utility as defined in KRS 278.010(3).

(3) "Customer" means any person, firm, corporation or body politic supplied service by any [electric, gas or combined energy-non-energy] utility.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified herein.

(5) All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him or her at his or her location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on bills. Each bill rendered periodically by utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing rate schedule on the bill.

(b) By publishing in a newspaper of general circulation once each year or when rate is changed.

(c) By mailing to each customer once each year or when rate is changed.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter readings. The registration of each meter shall read in the same units as used for

billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

(5) Each utility using customer-read meter information shall initiate a program to read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to the commission staff and any customer requesting such information.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two-twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly. The utility may require an equal deposit from all applicants for the same class of service. If the utility retains a residential deposit for more than eighteen (18) months, it shall advise the customer that the deposit will be recalculated based on actual usage upon the customer's request. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars from the deposit calculated on actual usage, then the utility shall refund any over collection and may collect any underpayment. Refunds may be made by check or by credit to the customer's bill.

(2) Notification of a customer's right to a deposit recalculation shall be made at least once annually. The notice may be made by means of a general mailing (or bill stuffer) to all customers which specifies the above conditions.

(3) The refund provisions contained in subsection (1) of this section notwithstanding, a utility shall not be required to refund any excess deposit if the customer's bill is delinquent by more than one (1) billing period at the time of recalculation.

(4) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit. If a residential deposit is recalculated in accordance with the above provisions, the customer shall return the original certificate of deposit to the utility in return for a new, accurate certificate.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof. Such records shall be maintained for five (5) years from the date of the resolution of the complaint.

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more than two (2) percent fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two (2) percent fast, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (1/2) of the elapsed time since the last previous test or for the past twelve (12) month period, whichever is less [but in no case to exceed twelve (12) months]. (See exception in subsection (5) of this section.)

(3) If the result of tests on a customer's meter shows an average error greater than two (2) percent slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (1/2) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two (2) percent fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has passed the refund shall be for the twelve (12) months specified in subsection (2) of this section plus the time exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall establish procedures, to be included in its rules and regulations, to monitor customers' usage and shall file the procedures with the Commission for review. The procedures shall be designed to draw the utility's attention to unusual deviations in a

customer's usage and shall provide for reasonable means by which the utility may determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter in accordance with subsections (2), (3) or (5) of this section.

(7) In instances in which the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer either during or after the investigation of the reasons for the investigation, and of the findings of the investigation. In those instances where knowledge of a serious situation requires more immediate notice, the utility shall notify the customer by the most expedient means available.

(8) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, 19_____, the meter bearing identification No._____ installed in your building located at _____ (Street and Number) in _____ (City) was tested at _____ (on premises or elsewhere) and found to register _____ (Percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.

Based upon this we herewith _____ (Charge or Credit) you with the sum of $_____, which amount has been noted on your regular bill.

(9) Whenever it is determined that a customer has been incorrectly billed for any reason, other than a meter which was registering incorrectly due to being out of tolerance or in an instance where a customer has been convicted of theft or fraud, the utility may immediately attempt to determine the period during which the error has existed, and the customer's bill for the period during which the error is known to have existed may be recomputed, and the account readjusted to give a refund or collect an additional amount of revenue from the underbilled. The basis for recomputing the customer bills shall be based upon the historic usage data for the customer over the previous time period, unless that information is not available; and in that case, then an average usage of similar customer loads over the previous time period involved shall be used in this adjustment. In the event the period during which the meter error existed is unknown, the customer's bill may be recomputed for one-half (1/2) of the elapsed time since the last previous test, or the past twelve (12) month period, whichever is less. Customer repayment of any underbilling shall be made over a period coextensive with the underbilling, not to exceed twelve (12) months.

(10) Customer accounts shall be considered to be current while a dispute is pending, as long as a customer continues to make good faith payments.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) working days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a disconnection and/or reconnection charge under the provisions of subsection (2) of this section, shall submit for commission approval a formal application setting out:

(a) The actual average cost of making such reconnections; and

(b) The effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with the utility's or commission's rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least ten (10) days written notice of such intention, delivered to an adult member of his or her household or mailed to his or her last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service shall be cut off without notice or refused, provided that the utility notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property, the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) Except as provided in subsection (2) of this section, a utility shall not be required to furnish service to any applicant when such applicant is indebted to the utility for service furnished until such applicant shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) A gas or electric utility may discontinue service under the following conditions:

(a) For nonpayment of bills - ten (10) day notice. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least ten (10) days' written notice, but the cut-off shall not be effected before twenty-seven (27) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from any [the original] bill. **The termination notice shall include notification to the customer in writing of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance.** If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until thirty (30) days elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued when the customer and the utility have reached agreement on a partial payment plan pursuant to subparagraph 1 of this paragraph and the customer is meeting the requirements of the plan. The written notice for any discontinuance of service shall advise the customer of his or her rights under this paragraph, subparagraph 1 and subparagraph 2 of this paragraph and of his or her right to dispute the reasons for such discontinuance.

1. Employee available to answer consumer questions and negotiate partial payment plan.

a. Every gas and electric utility shall have an employee available to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Utilities shall keep the designated employee informed of the commission's regulations regarding customer bills. If a customer indicates to any utility personnel that he or she is experiencing difficulty in meeting a current utility bill, that employee shall be able to refer the customer to the designated employee for explanation of the customer's rights under this paragraph and 807 KAR 5:008. The designated employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his or her financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service. Each gas and electric utility shall also prominently display in each office in which payment is received a summary of the customer's rights under this section and 807 KAR 5:008.

b. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall make the necessary provisions so that all customers may contact the utility employee without charge. Such provisions may include a policy allowing customers to make collect calls to the utility.

c. Each major [Class A or B] utility (as defined by the Uniform System of Accounts) shall have at least one (1) employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established working hours but not less than seven (7) hours per day, five (5) days per week excluding holidays.

d. Each minor [Class C or D] utility **(as defined as all utilities that are not major utilities under the Uniform System of Accounts)** [(as defined by the Uniform System of Accounts)] shall have an employee available to answer consumer questions and negotiate partial payment plans at the utility's office during the utility's established office hours but not less than seven (7) hours per day, one (1) day per week.

2. Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Human Resources, Department for Social Insurance. Upon written certification from the Department for Social Insurance, issued at one (1) of its offices or the office of its designee, a customer who is eligible for energy assistance under the Department's guidelines or is certified as being in genuine financial need, defined as any household with gross income at or below 130 percent of the poverty level, and who has been issued a ten (10) day notice between December 1 and March 1 for nonpayment of a gas or electric bill and who presents such notice to the Department for Social Insurance or its designee, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance or its designee. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill as soon as possible but not later than October 15, the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under this paragraph, subparagraph 1 of this paragraph and this subparagraph, as required by paragraph (a) of this paragraph, the ten (10) day notice or a bill insert sent with the ten (10) day notice shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet for Human Resources, Department for Social Insurance. Referral of such customer to such office of the department may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.

3. Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget

payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply primarily [only] to a utility's residential customers; however, a utility may offer budget payment plans to other classes of customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application, a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan. No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) A water, sewage or telephone utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of [any []the original[]] bill. Such termination notice shall be exclusive of and separate from any [the original] bill. **The termination notice shall include notification to the customer in writing of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance.** If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, except as provided in 807 KAR 5:008, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's or commission's rules and regulations. This charge may include the cost of disconnecting the service and, in accordance with Section 10 of this regulation, shall not exceed the actual average cost.

(2) The charges, however, shall be applied uniformly within reasonable classifications throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for the use of any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 16(2)(a)-(b).

(2) A utility may have all or part of its

testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the commission's Meter Standards Laboratory. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by this commission. These certified meter testers shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers" and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him or her to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him or her to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him or her as an employee of the utility, or carry a badge or other identification which will identify him or her as an employee of the utility, the same to be shown by him or her upon request.

Section 15. Meter Test Records. (1)(a) Test cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years. [The record of the prior periodic test of each meter shall be maintained for at least ninety (90) days after the current test has been made or until a refund or billing has been made or it is determined that a refund or billing is not to be made in accordance with Section 9 of this regulation.]

(2) History. Each utility shall keep numerically arranged and properly classified records giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission.

(3) Sealing of meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities conducting the company's

wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to such poles and to use such facilities, as customers, for transmission of signals to their patrons.

(2) The rates, terms and conditions on which such use of the utility's facilities are made shall be set forth in the tariffs of the utilities, which shall be prepared and filed in accordance with the regulations of the commission governing tariffs generally.

(3) With respect to a complaint proceeding in any individual matter concerning cable television pole attachments before the commission, final action shall be taken on the same within a reasonable time, but in no event to exceed 360 days.

Section 18. [17.] System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 19. [18.] Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.

Section 20. [19.] Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 21. [20.] Complaint Tests. [(1)] Any customer of the utility may request a meter test by written application to the commission, after having first obtained a test from the utility [accompanied by payment of such fee for the test as prescribed below]. Such request may not be made more frequently than once each twelve (12) months. [Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until such time as a commission representative is present to witness the removal and testing of said meter [completion of such test].]

[(2) If a meter tested upon complaint of a customer is found to register not more than two (2) percent fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two (2) percent fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.]

[(3) The charges fixed by the commission for making such tests are as follows:]

[(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:]

[Amperes Rated Capacity	Fee
30 and under	$ 6
Over 30 to 100	12
Each additional 50 amperes or factor thereof	3]

[Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:]

[Kilowatts Rated Capacity	Fee
5 KW and under	$ 6
Over 5 to 25	12
Over 25 to 100	24
Over 100 to 500	48]

[Plus one-half (1/2) of the cost of transportation of the commission representative between the office of the commission and the point of test.]

[(b) Gas. Displacement type meters operating on distribution system pressures:]

[Capacity in Cu. Ft. Per Hour	Fee
1,000 cu. ft. per hour and under	$12
Over 1,000 to 10,000	24
Over 10,000 to 100,000	36]

[Plus one-half (1/2) of the cost of transportation of the commission representative between the office of the commission and the point of test.]

[(c) Water:

Size	Fee
Outlet 1 inch or less	$12
Outlet over 1 inch to 2 inches	18
Outlet over 2 inch to 3 inches	24
Outlet over 3 inch to 4 inches	30]

[Plus one-half (1/2) of the cost of transportation of the commission representative between the office of the commission and the point of test.]

[(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.]

Section 22. [21.] Safety Program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(1) Require employees to use suitable tools and equipment in order that they may perform

their work in a safe manner.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 23. [22.] Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures must be approved by [shall be filed with] the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:

1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.

2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.

3. Substations where the primary voltage is sixty-nine (69) KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.

4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.

5. Electric lines operating at sixty-nine (69) KV or greater (including insulators, conductors, and supporting facilities).

(b) At intervals not to exceed one (1) year:

1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.

2. Substations where the primary voltage is less than sixty-nine (69) KV but is fifteen (15) KV or greater.

(c) At intervals not to exceed two (2) years: Electric lines operating at voltages of less than sixty-nine (69) KV (including insulators, conductors and supporting facilities).

(d) Other facilities:

1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.

2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.

(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended by the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for certain inspections provided for in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified and for certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:

1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.

2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.

3. The curb box on service line shall be inspected for accessibility.

(b) Other facilities:

1. Utility buildings inspected for compliance with safety codes at least annually.

2. Construction equipment under the control of the utility inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals: individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals not to exceed the periodic meter test intervals: the curb box and valve on the service line shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.

(f) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5)(a) Each water utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Source of supply:

a. Dams, physical and structural, annually.

b. Intake structures, physical and structural, annually.

c. Traveling screens, physical and structural and safety of operation, annually.

2. Purification:

a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.

b. Chemical feed equipment, for proper and safe operation, annually.

c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.

d. Hydrants, for proper and safe operation, annually.
e. Utility buildings, inspection for compliance with safety codes, annually.
f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.
g. Mains and valves, leaks, annually.
(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.
(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.
(6)(a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.
1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety - Every two (2) years.
2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions - At least annually.
3. Utility-provided station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring - When on customer's premises.
4. Utility buildings: Inspection for compliance with safety codes - At least annually.
5. Construction equipment: Inspection for defects, wear and operational hazards - At least quarterly.
(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer, all portions of the system (including those listed above) which are the subject of the report.
(c) Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 24. [23.] Reporting of Accidents, Property Damage or Loss of Service. Each utility, other than a natural gas utility, shall notify the commission of any utility related accident which results in death or serious injury to any person or any other incident which has or may result in substantial property damage or substantial loss of service. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph. A summary [detailed] written report shall be submitted to the commission within seven (7) days. Natural gas utilities shall report accidents in accordance with the provisions of 807 KAR 5:027.

Section 25. [24.] Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

RICHARD D. HEMAN, JR., Chairman
MELVIN H. WILSON, Secretary
APPROVED BY AGENCY: January 7, 1986
FILED WITH AGENCY: January 7, 1986 at noon

PROPOSED AMENDMENTS

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 1:120. Separations and disciplinary actions.

RELATES TO: KRS 18A.005, 18A.075, 18A.095, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 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 requires the Commissioner of Personnel to prepare and recommend to the board rules which provide for layoffs and for separation of employees deemed unsatisfactory or excessive by agency or department heads. KRS 18A.110 requires the commissioner to prepare and submit to the board rules which provide for layoffs, imposition of fines of not more than ten (10) days' pay, suspension without pay for not longer than thirty (30) days, and for discharge or reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these rules, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties. At the time that an employee is given written notice of layoff, dismissal, suspension and disciplinary fine, an informational copy shall be transmitted to the Personnel Board.

Section 2. Layoffs. (1) An appointing authority may layoff an employee in the classified service whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. An employee with status may appeal his layoff in accordance with 101 KAR 1:130. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff and of his right to appeal. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee under the merit system regulations, unless circumstances prevent

such an interview; such circumstances must be detailed in writing to the commissioner.

(2) Seniority, performance, appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the commissioner. No status employee is to be separated by layoff while there are seasonal, federally funded time limited, provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality. "Probationary" as used in this subsection does not include employees serving a probationary period as a result of a promotion.

(3) The appointing authority and the department shall attempt to place the employee in another position for which the employee is qualified prior to the effective date of layoff.

Section 3. Dismissals. (1) The appointing authority may remove any employee with status only for cause after furnishing the employee and the commissioner with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Notifications of dismissal that do not properly specify the reasons shall be considered invalid and the employee shall remain on the payroll until such time as proper charges are effected.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing, or upon request, to appear personally with counsel and reply to the appointing authority or his deputy.

(3) Prior to the effective date of dismissal of an employee with status the employee shall be afforded the opportunity to appear personally with or without counsel and respond to the reasons for the proposed dismissal to the appointing authority or his deputy and show cause why the action should be modified or set aside. In those cases where an agency has a pretermination hearing process, approved by the Commissioner of Personnel, the convening of such pretermination hearing or the appointing authority's providing, in writing, the opportunity for an employee to request a pretermination hearing shall be considered as meeting the requirements of this section.

(4) [(3)] An employee with status may appeal his dismissal as set forth in 101 KAR 1:130.

(5) [(4)] A dismissed employee may be required to forfeit all accrued leave.

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

Section 4. Separation During Probationary Period. An employee may be separated without the right of appeal at any time during the probationary period as set forth in 101 KAR 1:100, Section 3.

Section 5. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 7. Suspensions. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Such a suspension shall not exceed thirty (30) working days for each occurrence. An employee with status may appeal his suspension as set forth in 101 KAR 1:130.

Section 8. Disciplinary Fines. An appointing authority may impose as a disciplinary measure a fine of not more than ten (10) days pay to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days pay for each occurrence. The employee shall be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the commissioner. In the case of an employee with status, such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. An employee with status may appeal the action in accordance with the provisions of 101 KAR 1:130. For purposes of 101 KAR 1:130, the effective date of a disciplinary fine shall be deemed to be the date the employee receives the notification required by this section.

Section 9. Written Reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given. A written reprimand, in and of itself, is not an appealable penalization and is not a basis for appeal.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at Noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 24, 1986 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 February 19, 1986 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 KAR Title 101.
(a) Direct and indirect costs or savings to those affected: None, unless the change decreases litigation. Only timing of meeting has changed.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None, unless the change decreases litigation. Only timing of meeting has changed.
(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: No change.
(3) Assessment of anticipated effect on state and local revenues: See (1) and (2).
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment sets a standard only.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation brings the merit system into compliance with the Loudermill decision.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees and state agencies under KRS Chapter 18A and KAR Title 101 are covered by the amendment.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:070. Requirements for foreign-trained physical therapists.

RELATES TO: KRS 327.060
PURSUANT TO: KRS 327.040
NECESSITY AND FUNCTION: This regulation establishes the requirements of a foreign-trained physical therapist to permit the therapist to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to assure that the applicant possesses adequate educational and clinical preparation.

Section 1. The following requirements for a foreign-trained physical therapist to become licensed must be fulfilled:
(1) Furnish the board a report of a board approved credientialing agency for educational status. The educational requirements of licensure require an applicant to have satisfactorily completed at least 120 semester credits in a program equivalent to a U.S. Bachelors degree in Physical Therapy. At least sixty (60) of these semester credits must be in professional physical therapy courses as described and distributed in the approved credentials form. At least fifty-eight (58) of these semester credits must be in general education courses as described and distributed in the approved credentials form, of which at least forty-five (45) semester credits must be completed at the time of application. The remaining semester credits in general education would be completed by College Level Entrance Proficiency (CLEP) or at a board approved educational institution.
(2) The applicant for licensure by examination must have English as his native language or have submitted the results of a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or the Test of Spoken English (TSE) with a total score of at least 220.
[(3) Furnish the board evidence of legal permission, as furnished by the U.S. Department of Immigration, for employment in this country.]
(3) [(4)] Submit a satisfactorily completed application and appropriate fee.
(4) [(5)] Successful completion of one (1) year, totaling at least 1000 clock hours of supervised practice under a physical therapist licensed under this chapter. The supervised practice will be in an acute care facility serving both in and out patients that has been approved by the board. The applicant will work only with on-site supervision until a score of three and five-tenths (3.5) on a four (4.0) scale has been achieved utilizing the board provided clinical evaluation form. Evaluations will be submitted to the board quarterly by the clinical supervisor. The applicant will work under supervision, as do other applicants with a temporary permit after achieving the required score of three and five-tenths (3.5). This requirement may be satisfied by one (1) year of supervised practice in a state with license requirements at least comparable to those of Kentucky or by the consent of the board. Evidence of that experience must be in writing confirming successful completion and satisfactory performance.
(5) [(6)] Successful completion of the examination as specified in KRS 327.050. The examination, when next offered by the board for other candidates, shall be taken after the applicant becomes a candidate for licensure, unless excused by the board.

Section 2. The following pertain to temporary permits: (1) Following completion of Section 1(1) to (3) [(4)] of this regulation and submission of an approved Supervisory Agreement Statement, and applicant by examination, an applicant who needs to complete his general education requirements and/or an applicant who has not yet satisfactorily completed a year of supervised practice as a physical therapist will be issued a temporary permit to practice under the supervision of a designated Kentucky licensed therapist.
(2) All requirements for licensure shall be

completed within the maximum period of twenty-one (21) months in which an applicant may work as a physical therapist with a temporary permit. If not completed within that time period, the temporary permit is revoked and the applicant may no longer work in Kentucky as a physical therapist. An applicant who has failed to pass the examination may reapply in one (1) year as per 201 KAR 22:031, Section 3. Applicants who have failed to complete general education requirements may reapply when those requirements have been met.

JANET RODGERS, Chairman
APPROVED BY AGENCY: December 5, 1985
FILED WITH LRC: January 13, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 21, 1986 at 10 a.m. in Room 107 of the Capitol Annex. Anyone interested in attending this hearing shall contact in writing by February 16, 1986: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 1614 Dunbarton Wynde, Louisville, Kentucky 40205-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly
(1) Type and number of entities affected: Approximately eight applicants for initial U.S. licensure/year when applicants are non-U.S. citizens.
(a) Direct and indirect costs or savings to those affected:
1. First year: Minimum $50/appeal to U.S. Department of Immigration.
2. Continuing costs or savings: No cost factors.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Greatly reduced for applicants and facilities wishing to employ non-citizen applicants.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Savings in time of staff in counseling and postage.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Considerable reduction in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not accepted by U.S. Department of Immigration.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Change will bring regulation into compliance with U.S. Department of Immigration laws.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Extensive efforts were made prior to amendment.
(6) Any additional information or comments: The pre-amendment regulation was adopted by the Board of Physical Therapy to assure that applicants for licensure here had been granted legal permission to be employed by the U.S. Department of Immigration before we granted our permission for them to provide physical therapy to persons in Kentucky. This method had been successful until October 1985 when applications for H-1 VISAs began being rejected on the basis of our regulation and occurred when those applications began being processed in the Memphis Immigration District. Since that date four appeals for reconsideration have been made with considerable effort being expended by this board, applicants and prospective employers. Communication from Immigration in Washington, D.C. indicates that appeals will not be granted until temporary licensure has been granted by this board.

Tiering:
Was tiering applied? No. Standards apply uniformly.

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 allow specific fishery management programs in private waters [clarify the method for measuring fish].

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 and as provided in 301 KAR 1:180, Fisheries management permit for private waters:

	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 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.

DON R. McCORMICK, Commissioner
G. WENDELL COMBS, Secretary
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Febraury 26, 1986 at 10 a.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
(1) Type and number of entities affected: Approximately 100,000 private pond owners.
(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 costs or savings will occur.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Some 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:

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 1:057. Trotlines; sport fishing.

RELATES TO: KRS 150.010, 150.025, 150.175, 150.445
PURSUANT TO: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation sets forth the conditions and provisions for legal use of a sport fishing trotline. It is necessary to protect the commercial and sport fish populations. This amendment is necessary to resolve use conflicts between commercial and sport fishermen below Smithland Lock and Dam.

Section 1. Only two (2) sport fishing trotlines (not more than fifty (50) hooks each) may be fished or used by a sport fisherman at any one (1) time.

Section 2. Each trotline must be baited and all fish removed at least once every twenty-four (24) hours.

Section 3. Each trotline must be removed from the water when fishing is terminated.

Section 4. Failure to bait and remove fish from the trotline each twenty-four (24) hours or failure to remove the line from the water at the termination of fishing shall constitute illegal use of the gear and said gear shall be subject to confiscation and/or the user subject to prosecution.

Section 5. No sport fishing trotline may be used within 700 yards below Kentucky Dam [or], that area between Barkley Dam and Highway 62 Bridge, and that segment of the Ohio River below Smithland Dam extending from a point 200 yards below the dam to the end of the outer lock wall.

Section 6. No sport fishing trotline may be used in those lakes under 500 acres owned or managed by the Department of Fish and Wildlife Resources, except those lakes on Ballard County Waterfowl Management Area.

DON R. McCORMICK, Commissioner
G. WENDELL COMBS, Secretary
CHARLES E. PALMER, JR., Chairman
ADOPTED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Febraury 26, 1986 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
(1) Type and number of entities affected: Approximately 600 sport fishermen.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. 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 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: None

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

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

301 KAR 1:122. Importation, possession; live fish.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.190
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation sets forth conditions and provisions that prohibit the importation and possession of those fishes considered to be detrimental to Kentucky's resident fish population. It is necessary in order to protect Kentucky's fish population. This amendment is necessary to allow the use of the grass carp for aquatic vegetation control purposes.

Section 1. No live fish, live minnow or live bait organisms (as defined in 301 KAR 1:130) or reproductive part thereof, not native or established in Kentucky waters can be bought, sold, possessed, imported, or in any way used or released into the waters of this Commonwealth, except as specified in Sections 2 and 4 of this regulation.

Section 2. Exceptions. (1) Aquarium species except those in Section 3 of this regulation may be imported, sold, or possessed in aquaria, but may not be released directly or indirectly into the waters of this Commonwealth.
(2) Triploid (sterile) grass carp (Ctenopharyngodon idella) may be imported, sold, or possessed provided the proper permit is obtained as provided in 301 KAR 1:170.
(3) Diploid (fertile) grass carp may be imported and possessed by certified propagators for the exclusive purpose of producing triploid grass carp.

Section 3. The following living fish may not be imported, sold, or possessed in aquaria:
(1) Sub-family Serrasalmoniae - piranha, piraya, pirae, caribe, or tiger fish.
(2) Astyanax ficiatus mexicanus - Mexican banded tetra, Mexican minnow or Mexican tetra.
(3) Petromyzon marinum - sea lamprey.
(4) Genus Clarias - walking catfish.
(5) Genus Ophicaphalus or Channa - snakeheads of Asia and Africa.

[(6) Ctenopharyngodon idella - white amur.]

Section 4. Certain hybrid fish which are not native or established in Kentucky waters may be bought, imported, sold, possessed and released into specified waters of this commonwealth provided the appropriate permits are obtained.

DON R. McCORMICK, Commissioner
G. WENDELL COMBS, Secretary
CHARLES E. PALMER, JR., Chairman
ADOPTED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Febraury 25, 1986 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
(1) Type and number of entities affected: Approximately 75,000 small pond and lake owners.
(a) Direct and indirect costs or savings to those affected: Significant savings in herbicide cost.
1. First year: (initial investment) - no savings.
2. Continuing costs or savings: No control costs for up to a 10-year period.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Some cost to administer program.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Some required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Too costly.
(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. The amendment is not tiered, however, the complete regulation is.

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

301 KAR 1:150. Waters open to 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 regulate the places where commercial fishing is permitted to insure that the size of the water and fish population is large enough for this type of activity to better utilize and conserve those populations concerned. <u>This amendment is necessary to resolve use conflicts between commercial and sport fishermen below Smithland Lock and Dam.</u> [The commissioner, with the concurrence of the commission, finds it consistent with accepted fish management practices to authorize commercial fishing in the lowermost section of Salt River and so amends this regulation.]

Section 1. Appropriately licensed commercial fishermen may fish with commercial fishing gear in the following designated waters subject to requirements as set forth in regulations designating commercial gear and manner of taking. Commercial gear may be used in no other waters of the commonwealth except under specific permit.

Section 2. Commercial Fishing Waters. (1) Streams and rivers:
(a) Barren River from its junction with Green River upstream to Greencastle, Kentucky;
(b) Big Sandy River from its junction with Ohio River upstream to junction of Levisa and Tug Forks;
(c) Levisa Fork of Big Sandy River from its junction with Big Sandy upstream to 200 yards below mouth of Paint Creek in Johnson County;
(d) Cumberland River from its junction with Ohio River upstream to Highway 62 bridge;
(e) Eagle Creek from its junction with Kentucky River upstream to Highway 22 bridge in Grant County;
(f) Green River from its junction with Ohio River upstream to 200 yards below Lock and Dam 6;
(g) Highland Creek from its junction with Ohio River upstream to Rock Ford Bridge in Union County;
(h) Kentucky River from its junction with Ohio River upstream to junction of North and Middle Forks of Kentucky River;
(i) North Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Walker's Creek;
(j) South Fork of Kentucky River from its junction with Kentucky River upstream to mouth of Cow Creek;
(k) Licking River from its junction with Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;
(l) Mississippi River from the mouth of Ohio River downstream to the Tennessee line;
(m) Mud River from its junction with Green River upstream to McGee Landing in Butler and Muhlenberg Counties;
(n) Ohio River from its junction with Mississippi River upstream to West Virginia line <u>except that segment of the river that extends</u>

from a point 200 yards below Smithland Dam to the end of the Smithland outer lock wall (a distance of some 625 yards) wherein slatbaskets will be the only piece of commercial gear allowed;

(o) Pond River from its junction with Green River upstream to Highway 62 bridge;

(p) Panther Creek from its junction with Green River upstream to head of creek;

(q) Rough River from its junction with Green River upstream to Highway 69 bridge at Dundee, Kentucky;

(r) Tennessee River from its junction with Ohio River upstream to River Mile 17.8;

(s) Tradewater River from its junction with Ohio River upstream to bridge; and

(t) Salt River from its junction with the Ohio River upstream to the northwestern boundary of Ft. Knox.

(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream:

(a) Barkley;
(b) Cumberland;
(c) Herrington;
(d) Kentucky;
(e) Nolin;
(f) Rough River;
(g) Overflow lakes directly connected to the Mississippi and Ohio Rivers;
(h) Dewey Lake is open uplake to a point directly beneath the concrete structure known as Buffalo Bridge which crosses the lake; and
(i) Barren Lake.

DON R. McCORMICK, Commissioner
G. WENDELL COMBS, Secretary
CHARLES E. PALMER, JR., Chairman

ADOPTED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Febraury 25, 1986 at 10 a.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

(1) Type and number of entities affected: Approximately 30 commercial fishermen and approximately 600 sport fishermen.

(a) Direct and indirect costs or savings to those affected: Some loss in income to commercial fishermen.

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 available.

(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 but the complete regulation is.

DEPARTMENT OF AGRICULTURE
(Proposed Amendment)

302 KAR 20:180. Restrictions equine viral arteritis.

RELATES TO: KRS 257.020, 257.030
PURSUANT TO: KRS 257.030
NECESSITY AND FUNCTION: To protect the thoroughbred industry from the spread of Equine Viral Arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.

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

(1) "EVA" means Equine Viral Arteritis a communicable disease in livestock;

(2) "Vaccinated" or "Vaccination" means equine vaccinated with EVA [equine] modified live virus vaccine and the vaccination status kept current in accordance with manufacturers recommendations;

(3) "Sero Positive" horse means the horse has reacted positive to a blood test for EVA;

(4) "Sero Negative" horse means the horse has reacted negatively to a blood test for EVA;

(5) "Book or Booking" means the contracting of mares to breed to stallions and/or the scheduling of mares to breed to stallions;

(6) "Chief Livestock Sanitary Official" means the State Veterinarian of the Commonwealth of Kentucky;

(7) "Cover" means the act of breeding a stallion to a mare;

(8) "Shedder or Shedding" means equine that has the EVA organism in the body that is capable of being transmitted to other animals; and

(9) "Identified or Identification" of equine means identification by breed, color, age, sex, tattoo and markings.

Section 2. Sero Positive Stallions. Sero positive stallions shall be handled in the following manner:

(1) All thoroughbred stallions known to be shedding EVA shall not be permitted to breed until the Chief Livestock Sanitary Official determines that the stallion does not pose a threat of EVA spread. In determining whether a shedder poses a threat of disease spread the Chief Livestock Sanitary Official shall consider whether the farm where the shedder is located can comply in all respects with the restrictions for breeding shedders found in subsection (1)(b) of this section.

(a) Shedding stallions shall be housed and handled in a facility apart from nonshedding stallions;

(b) When the Chief Livestock Sanitary Official determines that a shedding stallion can breed the following control measures shall apply:

1. Owners and/or agents of mares booking or seeking to book to known shedding stallions shall be notified in writing by the owner and/or agent of the stallion as to the classification of the stallion as a shedder at the time of booking and copy of written notification sent to the Chief Livestock Sanitary Official;

2. Shedding stallions shall be housed, handled and bred in a facility isolated from nonshedding stallions;

3. Shedding stallions shall be bred only to mares that have been vaccinated against EVA at least twenty-one (21) days prior to breeding or to mares that are sero positive from prior vaccination or exposure;

4. All mares bred to shedding stallions shall be returned to the farm of origin and isolated from all other equine for a period of forty-two (42) days [the remainder of the breeding season] or shall be returned only to a premise where all animals on that premise are vaccinated a minimum of twenty-one (21) days prior to association with these mares where the mares shall remain on the isolation premise for a period of forty-two (42) days. Following the forty-two (42) day isolation period said mares shall return to the farm of origin where they shall be isolated for twenty-one (21) days. All mares bred to shedding stallions shall remain in Kentucky for the period of isolation; [and]

5. Mares bred to shedding stallions shall be returned to the farm of origin in a separate van or other mode of transportation. Upon returning to the farm of origin the van or other mode of transportation used to transport said mare shall be immediately cleaned and disinfected;

6. Mares that do not conceive after being bred to shedding stallions shall be bred to shedding stallions only.

(2) Sero positive stallions disclosed in 1985 or 1986 that were not tested sero negative prior to vaccination and those stallions known to have been associated with the transmission of EVA shall be handled as follows:

(a) It shall be the responsibility of the Chief Livestock Sanitary Official in cooperation with the stallion owner/manager to determine that such a stallion is not shedding EVA virus prior to the stallion being permitted to breed other than to test mares;

(b) The procedure for determining that a stallion is not a shedder is as follows:

1. Re-bleed the stallion and if confirmed as sero positive, breed the stallion a minimum of two (2) times a day for two (2) to four (4) days to each of two (2) sero negative test mares. These test mares shall be isolated from all other equine and blood tested on day fourteen (14) and twenty-eight (28) following the last cover.

2. If neither of the test mares shows symptoms of EVA and if each test mare remains sero negative following the twenty-eight (28) day test, the stallion shall be considered a nonshedder and allowed to breed.

a. The first two (2) mares bred to these stallions following the test mares [All mares bred to these stallions] must have a prebreeding blood test for EVA; and

b. The two (2) mares enumerated in item a of this subparagraph [Any sero negative mare subsequently bred to this stallion] shall be blood tested at [seven (7),] fourteen (14) and twenty-eight (28) days post breeding.

3. If any test mare shows symptoms of the disease and/or if any mare sero converts the stallion shall be considered a shedder and shall be handled in accordance with subsection (1) of this section.

(c) Owners and/or agents of mares booking or seeking to book to sero positive stallions classified under subsection (2) of this section shall be notified in writing by the owner and/or agent of the stallion as to the classification of the stallion at the time of booking and a copy of the written notification sent to the Chief Livestock Sanitary Official;

(3) Sero positive, vaccinated stallions never associated with the transmission of EVA must have been sero negative prior to vaccination and a statement presented by the owner and/or agent of the stallion and his veterinarian that the stallion had no known contact with EVA infected and/or exposed equine prior to vaccination nor during the twenty-one (21) days post vaccination.

Section 3. Stallions becoming infected during the breeding season shall immediately cease breeding and the Chief Livestock Sanitary Official immediately notified. All owners and/or agents having mares booked to that stallion or previously bred to that stallion shall be immediately notified in writing by the owner and/or agent of the stallion and a copy of written notification set to the Chief Livestock Sanitary Official. The infected stallion shall be classified as a shedder and shall be handled accordingly. The stallion may be subsequently determined by the Chief Livestock Sanitary Official to be a nonshedder by test breeding in accordance with Section 2(2)(b) of this regulation.

Section 4. Equine Vaccinated Against EVA. Equine vaccinated for the first time against EVA must have blood drawn for EVA testing prior to vaccination. [Vaccinations must be approved by the Chief Livestock Sanitary Official prior to vaccination and] must be reported to the Chief Livestock Sanitary Official within seven (7) days of the vaccination. Stallions vaccinated shall not be exposed to infected animals nor used for breeding for twenty-eight (28) days following vaccination. All equine vaccinated against EVA shall be properly identified.

Section 5. Mares that were Clinically Ill. Mares that were clinically ill with EVA or mares that were bred to shedding stallions in 1984 or any mare suspected of having EVA shall be blood tested. [In 1985 this shall include but be limited to all mares bred after April 15, 1984 at Airdrie Stud Breeding Shed #2, Domino Stud after May 24, 1984 and Warnerton Farm after May 7, 1984.] If found to be sero positive without proof of being sero negative prior to being vaccinated they shall be handled as follows:

(1) They shall only be bred to sero positive or vaccinated stallions;

(2) They shall be hauled in a separate van or other mode of transportation and shall be isolated from susceptible animals at the farm where breeding is to take place;

(3) These mares shall be bred last on any

given day during the breeding season and the breeding shed shall be cleaned and disinfected after breeding;

(4) The van or other mode of transportation hauling such mare shall be cleaned and disinfected immediately upon returning to the farm of origin; and

(5) Mares in foal from 1985 [1984] breeding shall be isolated one month prior to foaling and they shall remain in isolation until released by the Chief Livestock Sanitary Official. At foaling, or following abortion, appropriate samples should be taken from the mare and foal to evaluate the possibility of their shedding EVA virus.

Section 6. The Chief Livestock Sanitary Official may take such steps in addition to those outlined in this regulation as are reasonably necessary for the prevention and control of EVA in the equine population which shall include but not be limited to the isolation of all thoroughbreds and equine associated with them, thought to present the potential for EVA spread in the Commonwealth of Kentucky.

Section 7. All thoroughbred stallions not receiving boosters, nonvaccinated stallions and teasers shall be blood tested for EVA prior to the 1986 [1985] breeding season.

Section 8. Nurse mares shall be sero negative and/or properly vaccinated in accordance with Section 4 of this regulation and/or isolated on the thoroughbred farm.

Section 9. All newly acquired teasers shall be sero negative and/or properly vaccinated in accordance with Section 4 of this regulation.

Section 10. If any test mare after test breeding shows symptoms of the disease and/or if any mare sero converts the positive [test] mare shall be isolated from all other equine for the remainder of the breeding season.

Section 11. All nonvaccinated stallions shall be blood tested for EVA every fourteen (14) days during the breeding season. Nonvaccinated mares bred to nonvaccinated stallions shall be negative to a pre-breeding EVA blood test not less than thirty (30) days before breeding and shall be blood tested on day fourteen (14) and twenty-eight (28) after breeding. All vaccinated stallions that have not been revaccinated in acordance with manufacturers recommendations shall be considered nonvaccinated stallions for purposes of these regulations and shall be required to comply with Section 2(2) of this regulation to determine that the stallion is not a shedder.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: December 19, 1985
FILED WITH LRC: January 13, 1986 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 24, 1986 at 9 a.m. in Room 713 of the Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Thomas M. Troth, General Counsel, Kentucky Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. D. Wolf
(1) Type and number of entities affected: Thoroughbred industry.
(a) Direct and indirect costs or savings to those affected:
1. First year: There may be some savings to horse owners if farms of origin isolation is permitted.
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: Reporting of vaccination and sero positive or shedding status required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Collating vaccination reports and status reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Most feasible method 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: 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. Will apply evenly across the thoroughbred industry.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on January 15, 1986 [December 15, 1985] and hereinafter should be referred to as Corrections Policies and Procedures or institutional policies and procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

(1) The corrections policies and procedures:

1.1 Legal Assistance for Corrections Staff
1.2 News Media
1.6 Extraordinary Occurrence Reports
1.11 Population Counts and Reporting Procedures
2.1 Inmate Canteen
3.1 Code of Ethics
3.2 Inclement Weather and Emergency Conditions Policy
3.3 Holding of Second Jobs by Bureau Employees
3.7 Employment of Relatives
3.10 Staff Clothing and Personal Appearance
3.12 Institutional Staff Housing
3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
4.1 Attendance at Professional Meetings
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
4.4 Educational Assistance Program
6.1 Open Records Law
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.5 Return of Escapees by Automobile
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
10.1 Inmates Serving a Sentence of Death
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
12.1 Resident Clothing
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14.4 Legal Services Program
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15.4 Governor's Meritorious Good Time Award
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
17.1 Inmate Personal Property
17.2 Assessment Center Operations (Amended 1/13/86)
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-State Transfers
18.10 Pre-Parole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Pre-Release
25.4 Inmate Furloughs
25.6 Community Center Program (Amended 12/13/85)
25.7 Expedient Release
25.8 Extended Furloughs
27.1 Supervision: Case Classification
27.2 Risk/Needs Administration
27.4 Supervision Plan: General
27.8 Travel Restrictions
27.9 Conditions of Supervision
27.10 Preliminary Revocation Procedures
27.11 Apprehension and Transportation of Violators of Probation, Parole and Conditional Release
27.12 Fugitive Section/Probation and Parole
27.13 Supervision Fee
27.18 Absconder Procedures
27.19 Technical Violators
27.20 Intensive Supervision
28.2 Investigations: General
28.3 Pre-Sentence Investigations (To the Court)
28.4 Pre-Parole (Pre-Sentence) Investigation (To the Institution and State Parole Board)
28.5 Special Report to the Parole Board
28.7 Out-of-State Investigations

(2) The Kentucky State Reformatory Procedures Memorandum:

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-18 Assistant Duty Officers
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates (Added 1/13/86)
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 03-00-01 Shift Assignment/Reassignment
KSR 03-00-02 Employee Dress and Personal Appearance
KSR 03-00-05 Intra-Agency Promotional Opportunity Announcements
KSR 03-00-06 Employee Time and Attendance
KSR 03-00-07 Travel Expense Reimbursement
KSR 03-00-08 Employee Tuition Assistance Reimbursement (Amended 12/13/85)
KSR 03-00-10 Workers' Compensation (Amended 12/13/85)
KSR 03-00-11 Equal Employment Opportunity Complaints (Amended 1/13/86)
KSR 03-00-12 Employee Greivance Procedure

KSR 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeals Process (Amended 12/13/85)
KSR 03-00-15 Affirmative Action Program
KSR 03-00-16 Confidentiality of Personnel Records (Amended 12/13/85)
KSR 03-00-19 Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein (Amended 12/13/85)
KSR 03-00-20 Personnel Selection. Retention and Promotion
KSR 03-00-21 Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions
KSR 03-00-23 Work Planning and Performance Review (WPPR) (Amended 12/13/85)
KSR 03-00-24 Inclement Weather and Employee Work Attendance
KSR 03-00-25 Medical Examination Requirements for New Employees
KSR 04-00-02 Staff Training and Development
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Security of Inmate Records
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-03 Guidelines for Contractors
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery, or Death of an Inmate
KSR 08-00-09 Emergency Preparedness Training
KSR 09-00-04 Horizontal Gates/Box 1 Enter and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License
KSR 10-00-02 Special Management Inmates - Operations, Rules and Regulations for Unit D
KSR 10-00-03 Special Needs Unit
KRS 10-00-04 Unit D Admission/Release Ticket
KSR 11-00-01 Meal Planning for the General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates (Amended 12/13/85)
KSR 12-00-07 Regulations for Inmate Barbershop
KSR 13-00-01 Identification of Mentally Retarded Inmates
KSR 13-00-02 Regulations for Hospital Patients
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Dental Care for Inmates
KSR 13-00-05 Medical and Dental Sick Call
KSR 13-00-06 Services for Mentally Retarded Inmates
KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 14-00-01 Inmate Rights
KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, and C
KSR 15-00-02 Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-03 Governor's Meritorious Good Time Award (Amended 12/13/85)
KSR 15-00-04 Restoration of Forfeited Good Time (Amended 12/13/85)
KSR 15-00-05 Differential Status for SU (QUIT) Inmates
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 16-00-01 Visiting Regulations
KSR 16-00-02 Inmate Correspondence and Mailroom Operations
KSR 16-00-03 Inmate Access to Telephones
KSR 17-00-01 Housing Unit Assignment
KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05 Dormitory 10 Operations
KSR 17-00-06 Identification Department Admissions and Discharge Procedures (Amended 12/13/85)
KSR 17-00-07 Inmate Personal Property
KSR 18-00-01 Special Management Inmates - Unit D Classification
KSR 18-00-04 Returns from Other Institutions
KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center
KSR 18-00-06 Classification
KSR 18-00-07 Special Notice Form (Added December 13, 1985)
KSR 19-00-01 Inmate Work Incentives
KSR 19-00-02 On-the-Job Training Program
KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
KSR 20-00-01 Vocational School Referral and Release Process
KSR 20-00-03 Academic School Programs
KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
KSR 20-00-08 Integration of Vocational and Academic Education Programs
KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision (Amended 12/13/85)
KSR 21-00-02 Inmate Library Services
KSR 21-00-03 Library Services for Unit D (Amended 12/13/85)
KSR 22-00-03 Inmate Organizations

KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03 Religious Programming
KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03 Pre-Parole Progress Report

(3) The Kentucky State Penitentiary Operations Memorandum:

KSP 000000-06 Administrative Regulations
KSP 010000-04 Public Information and Media Communication
KSP 020000-01 General Guidelines for KSP Employees
KSP 020000-02 Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave (Amended 12/13/85)
KSP 020000-03 Work Planning and Performance Review (WPPR)
KSP 020000-04 Employee Disciplinary Procedure
KSP 020000-05 Proper Dress for Uniformed and Non-Uniformed Personnel
KSP 020000-06 Employee Grievance Procedure
KSP 020000-07 Personnel Registers and Advertisements
KSP 020000-09 Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files
KSP 020000-10 Overtime Policy
KSP 020000-15 Legal Assistance
KSP 020000-20 Equal Employment Opportunity Complaints
KSP 020000-23 Recruitment and Employment of Ex-Offenders
KSP 020000-24 Educational Assistance Program
KSP 020000-25 Mediation and Appeal Procedure for WPPR
KSP 020000-29 Promotional Opportunity Announcement Program
KSP 030000-01 Inventory Records and Control
KSP 030000-04 Requisition and Purchase of Supplies and Equipment (Amended 12/13/85)
KSP 030000-05 Inmate Personal Funds (Amended by Court Order 11/20/85)
KSP 030000-06 Inmate Commissary Program
KSP 040000-02 Inmate Records Section
KSP 040000-08 Inmate Equal Opportunity Policy
KSP 050000-14 Searches of Inmates, Visitors, Staff, Vehicles, Cells and Area Shakedown and Preservation of Evidence
KSP 060000-02 Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units (Amended 1/13/86)
KSP 060000-04 Operational Procedures for Special Management Inmates Assigned to Protective Custody
KSP 060000-11 Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 060000-12 Maximum Protective Custody
KSP 070000-01 Hospital Services
KSP 070000-02 Sick Call
KSP 070000-03 Health Evaluations
KSP 070000-04 Consultations
KSP 070000-05 Emergency Medical Procedure
KSP 070000-13 Pharmacy Procedures
KSP 070000-14 Medical Records
KSP 070000-16 Psychiatric and Psychological Services
KSP 070000-17 Dental Services for Special Management Units
KSP 070000-19 Optometric Services
KSP 070000-20 Menu Preparation and Planning
KSP 070000-24 Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25 Food Service Inspections
KSP 070000-30 Therapeutic Diets
KSP 090000-01 Inmate Work Programs (Amended 12/13/85)
KSP 090000-03 Correctional Industries (Amended 12/13/85)
KSP 100000-02 Visiting Program
KSP 100000-03 Disposition of Unauthorized Property
KSP 100000-04 Inmate Grooming and Dress Code
KSP 100000-05 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 12/13/85)
KSP 100000-06 Mail (Amended 1/13/86)
KSP 100000-07 Inmate Telephone Access
KSP 100000-08 Behavioral Counseling Record
KSP 100000-09 Due Process/Disciplinary Procedures (Amended 12/13/85)
KSP 100000-11 Authorized and Unauthorized Property for Inmates
KSP 100000-14 Property Room: Clothing Storage and Inventory
KSP 100000-15 Uniform Standards for Fire Safety, Sanitation and Security of all Cells (Amended 12/13/85)
KSP 100000-18 Inmate Grievance Committee Hearings
KSP 100000-20 Legal Services Program
KSP 100000-21 Photocopies for Non-Indigent Inmates with Special Court Deadlines
KSP 100000-22 Special Management Unit Legal Services Program
KSP 100000-24 Resident Legal Services Office Library
KSP 100000-25 WKFC Resident - Access to Kentucky State Penitentiary Legal Library
KSP 110000-03 Governor's Meritorious Good Time Award Committee
KSP 110000-04 Pre-Parole Progress Report
KSP 110000-06 General Guidelines of the Classification Committee (Amended 1/13/86)
KSP 110000-07 Statutory Good Time Restoration
KSP 110000-08 Award of Meritorious Good Time
KSP 110000-10 Special Needs Inmates
KSP 110000-11 Classification Committee - Transfer Requests
KSP 110000-12 Classification Committee - Inmate Work Assignments
KSP 110000-13 Classification Document
KSP 110000-14 Vocational School Placement
KSP 110000-15 Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-19 Custody/Security Guidelines
KSP 120000-04 Academic Education
KSP 120000-07 Community Center Program
KSP 120000-08 Inmate Furloughs

KSP 120000-11	Religious Services - Staffing (Amended 12/13/85)
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-24	Muslim Services
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

(4) The Luther Luckett Correctional Complex Policies and Procedures:

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 01-12-01	Duty Officer Responsibilities
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 02-06-01	Property Inventory
LLCC 03-01-01	General Guidelines for LLCC Employees
LLCC 03-01-02	Service Regulations, Attendance Accumulation and use of Leave
LLCC 03-02-01	Proper Dress for Uniformed Personnel
LLCC 03-03-01	Employee Grievance Mechanism
LLCC 03-04-01	Employee Records
LLCC 03-05-01	Personnel Registers
LLCC 03-06-01	Work Planning: Employee Evaluations and Evaluation Control
LLCC 03-08-01	Shift Transfers
LLCC 03-08-02	Rotation of Correctional Officers Between Central Security and Unit Management Staff
LLCC 03-09-01	Promotion Board
LLCC 03-10-01	Affirmative Action: EEO
LLCC 03-12-01	Confidentiality of Information Roles and Services of Consultants, Contract Personnel and Volunteers
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 10-03-09	Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-03-01	LLCC Population Categories
LLCC 11-07-01	Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-15-01	Post-Parole Furloughs
LLCC 11-16-01	Restoration of Forfeited Good Time
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 14-01-01	Sanitation, Living Condition Standards, and Cloting Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services: Sick Call and Pill Call
LLCC 15-02-01	Mental Health/Psychological Services
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Use of Psychotropic Medications
LLCC 15-04-01	Dental Services
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-12-01	Special Needs Unit
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-02-01	Inmate Grievance Procedure
LLCC 16-03-01	Inmate Legal Services
LLCC 17-01-01	Due Process/Disciplinary Procedure
LLCC 18-01-01	Inmate Correspondence
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-03-03	Inmate Visiting (DSU/ASU)
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 28-01-01	Privileged Trips
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Pre-Parole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

(5) The Northpoint Training Center Policies and Procedures:

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-01-02	Fiscal Management: Accounting Procedures
NTC 02-01-03	Fiscal Management: Checks
NTC 02-01-04	Fiscal Management: Insurance
NTC 02-03-01	Fiscal Management: Audits
NTC 02-08-01	Inmate Canteen
NTC 02-12-01	Inmate Personal Accounts (Added 1/13/86)
NTC 03-01-01	Employee Dress Code
NTC 03-02-01	General Guidelines for NTC Employees

NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants
NTC 03-04-01	Shift Assignments and Transfers
NTC 03-05-01	Work Planning and Performance Review
NTC 03-06-01	Worker's Compensation
NTC 03-07-01	Merit System Registers and Placement of Advertisements
NTC 03-08-02	Employee Identification Cards
NTC 03-09-01	Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File
NTC 03-10-01	Employment of Ex-Offenders
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings
NTC 03-14-01	Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
NTC 03-14-02	Promotional Opportunities
NTC 03-15-01	Time and Attendance; Accumulation and Use of Accrued Time
NTC 03-15-02	Sick Leave Abuse
NTC 03-15-03	Inclement Weather and Emergency Conditions
NTC 03-16-01	EEO - Affirmative Action
NTC 03-17-01	Employee Grievance Procedure
NTC 03-17-02	Review Committee
NTC 03-18-01	Educational Assistance Program
NTC 03-19-01	Holding of Second Jobs by Employees
NTC 04-01-01	Training and Staff Development
NTC 06-01-01	Offender Records
NTC 06-01-02	Records - Release of Information
NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 08-05-01	Duties of Fire Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-05-05	Control of Flammables, Toxic, Caustic, and Other Hazardous Chemicals and Janitorial Supplies
NTC 10-01-01	Special Management Inmates
NTC 10-01-02	Legal Aide Visits for Special Management Inmates
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Medical Screening of Food Handlers
NTC 11-06-01	Inspections and Sanitation
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Personal Hygiene Items
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services (Added 1/13/86)
NTC 13-03-01	Sick Call and Pill Call (Amended 1/13/86)
NTC 13-04-01	Pharmacy
NTC 13-05-01	Dental Services (Amended 1/13/86)
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery (Added 1/13/86)
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation [Inmate Health Evaluation] (Amended 1/13/86
NTC 13-12-01	Disabled and Infirm Inmates
NTC 13-13-01	Medical Alert System
NTC 13-14-01	Management of Chemically Dependent Inmates (Added 1/13/86)
NTC 13-15-01	Health Education for Inmates (Added 1/13/86)
NTC 13-16-01	Continuity of Health Care (Added 1/13/86)
NTC 13-17-01	Inmates Assigned to Health Services (Added 1/13/86)
NTC 13-19-01	Psychological Services (Added 1/13/86)
NTC 13-19-02	Mentally Retarded Inmates (Added 1/13/86)
NTC 13-19-03	Suicide Prevention and Intervention Program (Added 1/13/86)
NTC 14-01-01	Legal Services Program
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for Dormitories (Amended 12/13/85)
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting (Amended 12/13/85)
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting
NTC 16-03-01	Inmate Furloughs (Amended 1/13/86)
NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-03-01	Orientation
NTC 18-01-01	Pre-Parole Progress Report
NTC 18-01-02	Parole Eligibility Dates
NTC 18-02-01	Classification (Amended 12/13/85)
NTC 18-05-01	Transfers to Other Institutions
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (Added 1/13/86)
NTC 19-01-01	Inmate Work Program
NTC 20-01-01	Academic School Program
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage of Inmates
NTC 24-04-01	Honor Status (Amended 1/13/86)
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program (Amended 1/13/86)
NTC 25-01-02	Temporary Release/Community Center Release (Amended 1/13/86)
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-02	Certification of Volunteers and Guests

(6) The Kentucky Correctional Institution for Women Policies and Procedures:

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits

KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-03-01	Inventory Control of Non-Expendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of C.E.T.A. Money Earned
KCIW 03-01-01	Travel Expense Reimbursement
KCIW 03-02-01	General Orders for all Staff
KCIW 03-03-01	Employee Grievance Procedure
KCIW 03-05-01	Employee Personnel File
KCIW 03-06-01	Affirmative Action EEO and the Equal Employment Opportunity Complaint Procedure
KCIW 03-08-01	Employee Performance Evaluations
KCIW 03-09-01	Payroll and Personnel Manning Records
KCIW 03-10-01	Promotion Committee
KCIW 03-11-01	Personnel Registers
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit: General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Operations Manager
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Standards, Regulations for Food Service Employees
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities/Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Exams for New Employees
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Incentive Levels System
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-02	Inmate Mail Distribution
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Vendor Packages, Appliance Orders and Drug Store Orders
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property
KCIW 18-01-02	Institution Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, up-grade programs and release preparation program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, assessed and contain guidelines for vocational records
KCIW 20-01-06	Vocational Education: Staffing patterns/requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the integration with academic progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Pre-Parole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

(7) The Food Service Manual, Offender Records Manual, Classification Manual and Livestock Procedures Manual are hereby approved by the Secretary of the Corrections Cabinet as authorized by KRS 196.035, 197.020, 439.470, 439.590 and 439.640.

Offender Records Manual - None
Stock Procedural Manual - None
Food Services Manual - None
Classification Manual - None

JACK C. LEWIS, Deputy Secretary
APPROVED BY AGENCY: January 14, 1986
FILED WITH LRC: January 15, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February

21, 1986 at 9 a.m. at the auditorium in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 2,077 employees of the Corrections Cabinet, 4,685 inmates, 3,436 parolees, 6,516 probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Weekly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:045. Testing prerequisites for teacher certification; certificate application; beginning teacher internship program.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board, and KRS 161.030 sets up additional testing and internship requirements for certification. This regulation provides for the implementation of the testing prerequisites for teacher certification as prescribed in KRS 161.030 and for the beginning teacher internship program; and also provides for certificate renewal requirements and for filing certificate application forms.

Section 1. (1) Application for teacher certification shall be made on official forms prepared by the Department of Education.
(2) The application shall be supplemented by official transcripts showing all college credits necessary for the requested certification.
(3) The Superintendent of Public Instruction may authorize a teacher education institution to present certificates to applicants at the time the certification requirements are completed, provided the applications have been approved in advance by the Department of Education and provided the institution files the official transcripts of credits with the Department of Education within thirty (30) days.

Section 2. [Effective January 1, 1985,] Teacher certification issued initially under the provisions of 704 KAR 20:065, 20:070, 20:080, 20:085, 29:090, 20:145, 20:150, 20:159, 20:222, 20:230, 20:235, 20:240, 20:245, 20:270, and 20:290 shall comply with the provisions of KRS 161.030 and with the following requirements and procedures:
(1) There shall be a recency of preparation prerequisite for the issuance of certificates covered by this section, as follows:
(a) For applicants who have completed a four (4) year program of preparation but who have not yet completed a planned fifth-year program, the program of preparation shall have been completed within the five (5) year period next preceding the date of receipt of the certificate application form, or else the applicant shall have completed six (6) semester hours of additional graduate credit within this five (5) year period.
(b) Those applying for initial Kentucky certification who have a planned fifth-year program are exempt from taking the six (6) additional hours, provided they have completed three (3) years of successful teaching experience within the last five (5) years.
(c) For applicants who do not meet the recency of preparation prerequisite, and who have not previously held a regular Kentucky teaching certificate, but who otherwise qualify for certification, the certificate shall be issued for a one (1) year period ending June 30 of the next calendar year and with the condition that six (6) semester hours of credit applicable toward the usual renewal requirements be completed by September 1 of the year of expiration. Thereafter the further extension of the certificate shall be in compliance with the usual renewal requirements as specified in subsection (2) of this section.
(2) Teaching certificates described in this section shall be issued for a duration period of five (5) years and with provisions for subsequent five (5) year renewals, except that

the initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year and initial certification for applicants who do not meet the recency of preparation prerequisite shall be issued for a duration period of one (1) year. Upon successful completion of the beginning teacher internship as judged by majority vote of the beginning teacher committee, the one (1) year certificate shall be extended for the remainder of the five (5) year period. The certificate shall be renewed for subsequent five (5) year periods upon completion by September 1 of the year of expiration of three (3) years of successful teaching experience or upon completion by September 1 of the year of expiration of at least six (6) semester hours of credit or the equivalent in PSDU's or CEU's, as defined in 704 KAR 20:020, except that persons who have not yet completed the Planned Fifth-Year Program, as defined in 704 KAR 20:020, shall complete at least fifteen (15) semester hours of credit applicable to the program for the first renewal and the remainder of the program for the second renewal. Credits for certificate renewal shall be earned after the issuance of the certificate, and any credits earned in excess of the minimum requirements for any renewal period shall accumulate and be carried forward to apply toward subsequent renewals.

(3) Whenever there is a lapse in any certification identified in this section due to expiration for lack of meeting the renewal requirements, the certificate may be reissued at a later date for a one (1) year period by first completing at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-Year Program. The applicant shall complete another nine (9) semester hours of credit applicable toward the Planned Fifth-Year Program by September 1 of the year of expiration in order to qualify for extending the certificate for the remaining four (4) years of the usual five (5) year duration period. At the end of this renewal period the applicant shall have completed the Planned Fifth-Year Program to qualify for the next five (5) year renewal. Thereafter, the regular renewal schedule of six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's each five (5) year period shall apply. An applicant who has already completed the Planned Fifth-Year Program and whose certificate lapses may have the certificate reissued after first completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of <u>three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least</u> six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's for each five (5) year period.

(4) An applicant having completed five (5) or more years of full-time acceptable teaching experience outside of the Commonwealth of Kentucky, who otherwise qualifies for certification, shall not be required to take the written tests or to participate in the beginning teacher internship program. An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements, but who otherwise qualifies for the reissuance of a Kentucky teaching certificate shall not be required to take the written tests or to participate in the beginning teacher internship program. In calculating the minimum of five (5) years of acceptable experience, full-time teaching shall be defined as continuous employment for at least a half day or more; full-time teaching for a major portion of a semester shall be counted as one-half (1/2) year; and full-time experience for the major portion of an academic year shall be counted as one (1) year. At least three (3) of the five (5) years of experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(5) Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired.

(b) The completion of the written tests designated by the State Board of Education for:

1. General knowledge;
2. Communications skills;
3. Professional education concepts; and
4. Knowledge in the specific teaching field of the applicant, with minimum scores in each test as set by the State Board of Education.

(c) Evidence of full-time employment in a Kentucky school as attested by the prospective employer.

(6) Upon successful completion of the approved program of preparation and upon completion of the designated tests with acceptable scores, the Department of Education shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be valid for a four (4) year period beginning from the date of issuance from the Department of Education and ending on the same date four (4) years later.

(7) For persons who attain the statement of eligibility, but who are not employed on a full-time basis, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8) The one (1) year certificate shall be issued effective from the date of employment and shall expire June 30 of the next calendar year. If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school district.

(9) The first year of employment as a beginning teacher shall serve as the internship as described in KRS 161.030. The Superintendent of Public Instruction shall design, for State Board approval, the plan which provides for the beginning teacher committee, the support services for the beginning teacher, the evaluation of the performance of the beginning teacher, the development of criteria and procedures for the evaluation of the performance of the beginning teacher, and the training of the evaluators who make up the beginning teacher committee.

(10) The one (1) year internship shall include a minimum of 140 days of full-time teaching experience.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 7, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on February 24, 1986, at 10 a.m., Eastern Standard Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its January meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before February 19, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected: Approximately 100 certificate applicants annually who have already completed the master's degree or higher preparation.
(a) Direct and indirect costs or savings to those affected: Would eliminate the need of these teachers to expend personal time and tuition costs for 6 semester hours of collegiate credit.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable effect - there would be a very slight reduction in paperwork.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No appreciable change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Regulation ultimately applies to individual teacher candidates who must satisfy the same requirements for certification.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

705 KAR 1:010. Three year program plan.

RELATES TO: KRS 156.010, 156.035, 163.020, 163.030
PURSUANT TO: KRS 156.035, 156.070, 163.030
NECESSITY AND FUNCTION: KRS 156.010 designates the Department of Education as the sole state agency for developing and approving state plans required by federal law as prerequisites to receiving federal funds for vocational education; KRS 156.035 authorizes the State Board of Education to implement any act of Congress appropriating and apportioning funds to the state and to provide for the proper disbursement of such funds; KRS 163.020 accepts and agrees to comply with federal vocational education acts; and KRS 163.030 gives the State Board authority to comply with state and federal vocational education laws. The 1986-88 Kentucky Three Year Program Plan for Vocational Education is necessary in order to be eligible to receive federal funds under P.L. 98-524, and this regulation formally adopts such plan developed and approved by the Department of Education.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education, the 1986-88 Kentucky Three Year Program Plan for Vocational Education <u>as adopted on January 8, 1986</u> is hereby prepared and approved by the State Board of Education, in accordance with the appropriate federal guidelines, and submitted to the U.S. Secretary of Education for approval. This document is incorporated by reference and hereinafter shall be referred to as the 1986-88 Kentucky Three Year Program Plan for Vocational Education. Copies of the document may be obtained from the Office of Vocational Education, State Department of Education.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 8, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on February 24, 1986, at 10 a.m., Eastern Standard Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its January meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before February 19, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James A. White
(1) Type and number of entities affected: 180 school districts, 14 vocational regions, 20 community colleges and universities.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Three Year Annual Program Plan.
(3) Assessment of anticipated effect on state and local revenues: Will meet regulations required to obtain $15.03 million Federal Grant.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 157.200 to 157.290, 157.360
PURSUANT TO: KRS 156.070, 157.220, 157.221, 157.250, 157.360
NECESSITY AND FUNCTION: KRS 157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. This regulation establishes requirements for special education programs and is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with Public Law 94-142.

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to 157.290 inclusive, and the criteria listed in this chapter.
(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Office of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Office of Education for Exceptional Children.
(a) In order to receive tentative allotment of minimum foundation classroom units local school districts shall assure that the following criteria are met:
1. Approved teacher;
2. Approved housing;
3. Approved program plan; and
4. Minimum number of children for type of unit requested.
(b) Pursuant to KRS 157.360(6)(c) and (d), local school districts may choose between two (2) options for reimbursement for exceptional child units to provide home or hospital instruction. The two (2) options are as follows:
1. One (1) unit may be allocated for each ten (10) children in average daily attendance for the current school year, as provided by KRS 157.360(6)(c); or
2. The district may provide home or hospital instruction on an hourly basis, as provided by KRS 157.360(6)(d). The hourly reimbursement rate per child for districts utilizing this option shall be calculated as follows:

State Average Teacher's Salary (185 Day School Term X 6 Instructional Hours) + Current Operating Expense (175 Day Instructional Term X 6 Instructional Hours) = Hourly Reimbursement Rate

A maximum average of three (3) instructional hours per child per week will be reimbursed. The total reimbursement amount must be spent on teacher salary, travel expenses and teaching supplies for the home/hospital program. A minimum of seventy-five (75) percent of the total reimbursement amount must be allocated for teacher salary. An amount not to exceed twenty-five (25) percent of the total reimbursement amount shall be allocated for travel expenses and teaching supplies and equipment.
(c) Local school districts shall receive final allotment of minimum foundation classroom units provided the above criteria are met and the local school district validates to the State Department of Education that said unit(s) is operating pursuant to criteria listed in this chapter. Validation shall be made by filling out appropriate record(s) as provided by the Office of Education for Exceptional Children and shall be made pursuant to established schedules. Final allotment of funds due each district for reimbursement of home and hospital instruction programs shall not be distributed until all monthly attendance reports due for a given school district are received by the Department of Education.
(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.
(3) Qualifications for assignments of special education personnel. Teachers employed for a teaching assignment in a classroom unit for exceptional pupils shall hold appropriate state certification in the area(s) of assignment as required in Title 704 KAR Chapter 20, except as hereinafter provided:
(a) Teachers of classes for severely profoundly handicapped. Teachers assigned to classes established to serve pupils classified as severely/profoundly handicapped (S/PH) shall possess a certificate valid at any grade level for teaching trainable mentally handicapped or severely/profoundly handicapped pupils of any

age.

(b) Teachers of classes for multiple handicapped. Teachers assigned to classes established to serve multiple handicapped (MH) pupils shall meet the following requirements:

1. As of September 1, 1986, the assigned teacher shall possess a certificate valid at any grade level for teaching:

a. Trainable mentally handicapped or severely/profoundly handicapped for assignment to classes where the majority of students are multiple handicapped pupils whose intellectual functioning is trainable mentally handicapped; or

b. Educable mentally handicapped, learning disabilities, physically/orthopedically handicapped or learning and behavior disorders for assignment to classes where the majority of students are multiple handicapped (MH) pupils whose intellectual functioning is educable mentally handicapped or above. Severely/profoundly handicapped pupils shall not be assigned to classes taught by teachers with the certification specified in this section.

2. Teachers employed as of September 1, 1985, and assigned to classes for multiple handicapped students who do not possess a certificate as specified in paragraph (b)1a and b of this subsection may continue to be assigned to such classes provided the teacher has had class assignments in a class for multiple handicapped pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

(c) Teachers of cross-categorical classes. Teachers assigned to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall possess a certificate valid for teaching pupils of each of the specific areas of exceptionality to be enrolled, except as follows:

1. Local school districts may serve pupils classified as educable mentally handicapped (EMH), learning disabled (LD) and emotionally disturbed (ED) within the same classroom, provided teachers assigned to such classes are certified in at least two (2) of the categories of exceptionality or have certification in the area of learning and behavior disorders (LBD). Teachers employed as of September 1, 1985, with assignments to such classes and who are certified in only one (1) of the areas of exceptionality served may continue to be assigned to such classes until September 1, 1988, by which time appropriate certification must be obtained. Or, teachers employed as of September 1, 1985, and assigned to classes which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

2. Local school districts may serve pupils classified as trainable mentally handicapped, severely/profoundly handicapped and multiple handicapped whose intellectual functioning is trainable mentally handicapped within the same classroom, provided teachers assigned to such classes are certified in trainable mentally handicapped or severely/profoundly handicapped.

3. Local school districts may serve pupils classified as educable mentally handicapped (EMH) and learning disabled (LD) within the same classroom, provided teachers assigned to such classes are certified in the category of exceptionality of the majority of pupils or have certification in the area of learning and behavior disorders (LBD).

(d) Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria and which do not correspond with the certification of the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.

1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:

a. Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;

b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach the majority of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;

2. The assignment shall not exceed the length of the school year during which it was initiated.

(e) Replacement teacher for special education classes. When a local school district loses the services of the approved special education teacher after September 15, a replacement teacher may be used for a classroom unit for exceptional children under the following conditions:

1. The teacher qualifies for assignment to the class as specified in paragraphs (a) through (d) of this subsection.

2. If a teacher with appropriate certification in special education is not available for the vacated position, the local school district may assign a teacher to the class, with the exception of speech and communication disorders, pursuant to the following:

a. The superintendent and the local board of education shall submit an application to the Kentucky Department of Education, Office of Education for Exceptional Children, for each replacement teacher. The application shall be made on forms provided by the Kentucky Department of Education. Information which validates all attempts to employ an appropriately certified teacher shall accompany the application and shall document the following:

(i) Teachers with certification in special education are not available within the local school district for the position.

(ii) Efforts have been made to recruit a teacher certified in special education for the vacant position. This vacancy has been publicized by appropriate means, including advertisement of the vacant position.

(iii) The position will be filled by the best certified person available giving preference to the factors of academic preparation, prior successful teaching experience or related educational work.

b. The replacement teacher must qualify as a basic classroom teacher and hold, at minimum, a

provisional elementary, middle or secondary certificate valid for the grade level of the assignment.

c. The replacement teacher may not be employed for the same teaching assignment for the following year without obtaining appropriate certification or endorsement in special education.

d. If the Kentucky Department of Education, Office of Education for Exceptional Children, approves the replacement teacher, the effective employment date for the replacement teacher shall be the date the application and accompanying documentation are received and stamped in by the Office of Education for Exceptional Children.

(4) Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom units plans:

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital instructional plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The hospital instructional plan shall utilize a classroom-based teacher, an itinerant teacher, or a visiting teacher.

4. A home instruction plan shall be a program which provides educational services to pupils at the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher or a visiting teacher.

(b) Teacher and housing. Each classroom unit plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities and/or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities and/or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program pursuant to 702 KAR 3:120.

3. A visiting teacher shall be an approved teacher in a home and/or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher will be provided through the funding mechanism set forth in 707 KAR 1:051, Section 1(b).

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Office of Education for Exceptional Children. In granting approval the Office of Education for Exceptional Children shall assure that approved requests for such plan shall

contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(5) Length of school day. The length of school day shall be the same as for non-handicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Office of Education for Exceptional Children.

(6) Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 704 KAR 2:020.

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees may be established pursuant to approval by the Office of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);

(b) Local school district superintendent or designee (permanent member);

(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);

(d) Involved instructional supervisor depending on the age and level of the child;

(e) The parent(s) of the referred child;

(f) The referred child, where appropriate;

(g) Personnel responsible for providing evaluation information, where appropriate; and

(h) Other persons as requested by any member of the AARC.

(2) The functions of the AARC shall include the following:

(a) Receive referrals of the following nature:

1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in non-public schools, who are thought to need special education and related services.

2. Cases where the school-based admissions and release committee is not able to determine an appropriate educational placement for a referred pupil and make recommendations as to appropriate educational placement.

3. Cases from school-based admissions and release committee where appropriate services are not available within the school.

(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:

1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:

a. Contact a public agency or approved private agency/organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.

b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, and/or individual or conference calls. Receiving agency means an approved agency/organization which has indicated a willingness to provide the services requested by the local school district.

c. In collaboration with representative(s) of

the receiving agency, review and revise, where appropriate, the child's IEP.

d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.

e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.

2. Placement of an exceptional child in a public or private agency:

a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall: Assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.

b. An admissions and release committee of the receiving public agency shall: Conduct meetings for the purposes of reviewing and where appropriate revising the IEP, assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications and/or individual or conference calls.

c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.

d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be: participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and, at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency/organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP; and, agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be: participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to the educational progress in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC). The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine:

1. Continuation of current educational placement;
2. Change in educational placement; or
3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years following an individual evaluation utilized for initial placement purposes, or for re-evaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a re-evaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4) of this regulation, functions of the AARC and SBARC.

(7) Sub-district admissions and release committees: For those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The sub-district ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Sub-district ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish sub-district ARCs shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of the plan and pursuant to provisions specified by the Office of Education for Exceptional Children. The membership and functions of sub-district committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher/parent interviews, work samples, social/developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures. To the maximum extent possible, child evaluation procedures shall be non-discriminatory in that:

(a) Techniques and/or materials used are non-biased relative to race, culture, socio-economic status or impaired sensory, manual, or speaking skills, in order to insure that test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;
2. Understand the use of the different evaluation procedures; and
3. Properly administer and interpret the evaluation results.
4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated

for the specific purpose for which they are used.
(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.
(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
(5) No single evaluation procedure shall be used to determine an appropriate program for a child.
(6) Each child placed in a program for exceptional children shall be re-evaluated every three years or more frequently as warranted.
(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified in subsection (1) to (5) of this section.

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring/evaluation of each exceptional child's individual education program.
(1) Development. The individual education program shall include but not be limited to the following components:
(a) Present level of educational/behavioral performance including a written summary of strengths and weaknesses.
(b) Annual goals based on child's current level of functioning.
(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measurable intermediate steps between the present level of educational/behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.
(d) Specific special education and related services needed to meet the specified goals and objectives.
(e) Extent to which the child will participate in the regular education program.
(f) Projected dates for initiation of specified educational and related services.
(g) Anticipated duration of the specified special education and related services.
(h) Appropriate objective criteria and evaluation procedures; and
(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.
(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.
(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and activities that will assist the child in achieving the specified objectives and goals.
(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.
(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for on-going evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children.
(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.
(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.
(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:
(a) Determine placement;
(b) Base placement on the child's IEP;
(c) Determine placement at least annually; and
(d) Make placement consistent with the least restrictive environment concept as required in Section 7 of this regulation.
(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4) of this regulation.
(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or school system and may be considered pursuant to the following conditions:
(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.
(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.
(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.
(d) A trial placement shall not serve as a substitution for a more appropriate placement.
(e) The appropriate admissions and release committee shall review the trial placement no

later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.

(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.

(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.

(a) Change in placement shall mean, but not be limited to, a change from:

1. Special education and related services to regular education, including regular education with support services;

2. One (1) categorical program to another (e.g., TMH to EMH);

3. Or to a more or less restrictive environment (e.g., special class to resource room).

(b) Any change in placement shall follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement, including the written prior notice requirements as specified in 707 KAR 1:060.

(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his/her unique needs and capabilities.

(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.

(2) Self-contained classes, separate schooling or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) Each agency providing educational services shall insure that a continuum of placement alternatives is available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools." These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child, (grandparent, stepparent, etc.) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permission prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, <u>whereabouts of the parent cannot be determined</u> [are unavailable] or the child is a ward of the state <u>(parental rights have been terminated)</u>, such child shall be assigned a

surrogate parent to represent him/her in all matters relating to the provision of a free, appropriate public education.

1. The [State Department of Education and] local school district[s,] in cooperation with other public and private agencies shall recruit persons who can and will serve as surrogate parents. [The State Department of Education, Office of Education for Exceptional Children, shall maintain a registry of such persons to act in this capacity.] Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state; [and]

d. Be readily accessible to the children they represent; [.]

e. Be an adult - eighteen (18) or over; and

f. Be a U.S. citizen.

2. Assignment of a surrogate to a particular child shall be made by the local school district according to the following procedures:

a. Any person including local school district personnel, may file a request for [the assignment of] a surrogate to represent a child with the child's local school district [with a copy of the request to the State Department of Education, Office of Education for Exceptional Children].

b. The local school district shall acquire the proper documentation to substantiate the need [send a notice of the request] for a surrogate parent [to the adult in charge of the child's place of residence and to the parent(s) or guardian(s) at their last known address in an effort to determine the need for a surrogate parent]. Justification and documentation for surrogate parent assignment shall be:

JUSTIFICATION FOR SURROGATE	DOCUMENTATION NEEDED
No parent (as defined by federal regulation 34 CFR 300.10) can be identified. 34 CFR 300.10 the term "parent" means a parent, a guardian, a person acting as a surrogate parent of a child, or a surrogate parent. This term does not include the state if the child is a ward of the state. Comment: The term "parent's" defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to the parent(s) or guardian(s) at their last known address, documentation from the Cabinet for Human Resources that no parent exists or a copy of death certificate(s).
Whereabouts of the parent cannot be determined.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to parent(s) or guardian(s), at their last known address.
Child is a ward of the state and parental rights have been terminated.	A copy of the court order terminating the rights of the parent(s) or an affidavit from the local Cabinet for Human Resources, Social Services Field Office Supervisor, stating the child's name, birthdate, county of termination, and signature and title of the person giving it.

c. [If] The local school district [determines need for a surrogate as provided in subsection (2)(a) of this section, the State Department of Education, Office of Education for Exceptional Children, shall be notified in writing of such need. The Office of Education for Exceptional Children] shall assign a surrogate within fifteen (15) school [seven (7) calendar] days of the receipt of request for surrogate parent [notification].

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their non-handicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of PL 94-142 for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case

more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records must be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee may not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his/her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) to [of] this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement must accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent must be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and PL 94-142.

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles of individuals in the public agency who have access to education records must be maintained for public inspection.

(15) Public agencies must inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency must inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 7, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on February 24, 1986, at 10 a.m., Eastern Standard Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its January meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before February 19, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly S. Ratliff
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Postage, copying and time at the state and local level.
2. Continuing costs or savings: Postage, copying and time at the state and local level.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Surrogate will be appointed at the local level so the paperwork won't have to be sent to the state office for the appointment to be made.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Same as #1 above.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Savings of postage, copying, and time.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Keep sending the paperwork to the state department after the surrogate is recruited so we can approve the appointee - rejected - if the local school district is goint to recruit, why not let them appoint the surrogate.
(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. "Need for uniformity in approved programs throughout state."

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Thrift Institutions
(Proposed Amendment)

808 KAR 3:050. Conduct.

RELATES TO: KRS 290.070, 290.100, 290.225, 290.585, 290.715
PURSUANT TO: KRS 290.070
NECESSITY AND FUNCTION: KRS 290.070 requires the Department of Financial Institutions to prescribe rules and regulations for the proper conduct and regulation of credit unions. This regulation is to assure the proper conduct of credit unions.

Section 1. Refund of Interest. When an interest refund is authorized by the board of directors pursuant to the Act, it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 2. Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Financial Institutions.

Section 3. Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.
(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.
(3) The schedule of examination fees shall be as follows:
(a) Newly organized credit unions. No fee will be charged a newly organized credit union for the first examination made within a year of the date of its organization being approved.
(b) Credit unions with assets of less than $25,000; a fee of $50 [$100].
(c) Credit unions with assets of $25,000 to $50,000 [$500,000]; a fee of $50 plus $2 per $1,000 of assets over $25,000 [$100 plus $1.20 per $1,000 of assets over $25,000].
(d) Credit unions with assets of $50,000 to $100,000 [$500,000 to $1,000,000]; a fee of $100 plus $1.90 per $1,000 of assets over $50,000 [$670 plus $.60 per $1,000 of assets over $500,000].
(e) Credit unions with assets of $100,000 to $250,000 [over $1,000,000]; a fee of $195 plus $1.75 per $1,000 of assets over $100,000 [$970 plus $.30 per $1,000 of assets over $1,000,000].
(f) Credit unions with assets of $250,000 to $500,000; a fee of $457.50 plus $1.20 per $1,000 of assets over $250,000.
(g) Credit unions with assets of $500,000 to $1,000,000; a fee of $757.50 plus $.55 per $1,000 of assets over $500,000.
(h) Credit unions with assets of $1,000,000 to $2,000,000; a fee of $1,032.50 plus $.45 per $1,000 of assets over $1,000,000.
(i) Credit unions with assets of $2,000,000 to $5,000,000; a fee of $1,482.50 plus $.30 per $1,000 of assets over $2,000,000.
(j) Credit unions with assets of $5,000,000 to $20,000,000; a fee of $2,382.50 plus $.15 per $1,000 of assets over $5,000,000.
(k) Credit unions with assets of $20,000,000 to $50,000,000; a fee of $4,632.50 plus $.13 per $1,000 of assets over $20,000,000.
(l) Credit unions with assets of $50,000,000 to $100,000,000; a fee of $8,532.50 plus $.10 per $1,000 of assets over $50,000,000.
(m) Credit unions with assets over $100,000,000; a fee of $11,532.50 plus $.05 per $1,000 of assets over $100,000,000.

Section 4. Fidelity Bond. (1) Every credit union shall, by July 1, 1985, purchase a blanket fidelity bond to protect the credit union against losses caused by the occurrences covered therein. The minimum amount of such bond shall be the amount set out in 12 CFR 701.20, effective September 7, 1984 [February 15, 1978]. Copies of 12 CFR 701.20 may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.
(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year, in order to ascertain its adequacy in relation to risk exposure.

Section 5. Stocks and Bonds. Credit unions may invest, up to a maximum of five (5) percent of members shares in:
(1) Stocks of corporations rated A+ in the December 1985 [June 1984] issue of Standard and Poore's Corporation Security Owners Stock Guide; and
(2) Corporate bonds rated AAA or higher in the December 1985 [June 1984] issue of Standard and Poore's Corporation Bond Guide. Copies of the Guides may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 6. Risk Assets. Risk assets, for the purpose of establishing the regular reserve, shall be defined as set out in 12 CFR 700, effective July 14, 1980. Copies of 12 CFR 700 may be obtained from the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 7. Charitable Contributions. The board of directors may authorize contributions to civic, charitable or service organizations, each contribution not to exceed $100.

Section 8. Conversions. A state-chartered credit union may convert to another charter by complying with the following procedures:
(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, including the reasons for the proposed conversion. The notice may be mailed or hand delivered to the members. The notice shall set forth the date and place for this meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.
(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow absentee ballots.
(3) A statement of the results of the vote,

verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

DR. ROBERT M. DAVIS, Secretary
BALLARD W. CASSADY, Commissioner
APPROVED BY AGENCY: January 10, 1986
FILED WITH LRC: January 13, 1986 at 8 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 22, 1986, at 10 a.m. prevailing local time, in the office of the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing no later than February 17, 1986: J. Rick Jones, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3390.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ella Robinson
(1) Type and number of entities affected: 92 state-chartered credit unions.
(a) Direct and indirect costs or savings to those affected:
1. First year: No change.
2. Continuing costs or savings: Unknown; depends on asset growth.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No change.
2. Continuing costs or savings: Unknown; depends on asset growth.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes.

LOCAL MANDATE IMPACT STATEMENT

Regulation No.: 808 KAR 3:050
SUBJECT/TITLE: Conduct of Credit Unions
SPONSOR: Department of Financial Institutions
NOTE SUMMARY:
LOCAL GOVERNMENT MANDATE:
TYPE OF MANDATE:
LEVEL(S) OF IMPACT:
BUDGET UNIT(S) IMPACT:
FISCAL SUMMARY: Net Effect: No change in agency receipts.
MEASURE'S PURPOSE: Revise fees for examination of credit unions, based on increased growth of assets of credit unions.
PROVISION/MECHANICS:
FISCAL EXPLANATION:

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

Office of State Fire Marshall
(Proposed Amendment)

815 KAR 45:030. Fire protection instructors' qualifications and certification.

RELATES TO: KRS 95A.040(2)(b)
PURSUANT TO: KRS 95A.050(3)
NECESSITY AND FUNCTION: KRS 95.040(b) authorizes the commission to certify fire protection instructors. This regulation sets forth the prerequisite for and justification of those instructors.

Section 1. Definitions. The definitions of terms set forth in 815 KAR 45:020 shall apply to this regulation, unless otherwise stated.

Section 2. Requirements for Certification of Fire Protection Instructors. An individual may be certified by the commission as a fire protection instructor if satisfactory written evidence is provided to the commission that he or she:

(1) Is qualified by the following:

(a) Is a high school graduate or equivalent; and

(b) Is a certified firefighter (paid or volunteer); and

(c) Has four (4) years firefighting experience; and

(d) Has completed an instructor training course based on the objectives of NFPA 1041, and conducted:

1. By the Kentucky Department of Education; or
2. By a Kentucky college or university; or
3. At Kentucky State Fire School; or
4. By the National Fire Academy or a government entity authorized by the NFA to train within its own local jurisdiction and approved by the commission; or

(2) Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or

(3) Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or

(4) Holds a valid instructor's certificate issued by an out-of-state fire training agency and approved by the commission.

[(1) Holds a valid teaching certificate issued by the Kentucky Department of Education;]

[(2) Is a full-time instructor or other faculty member of an institution of higher education teaching in a fire science or fire technology curriculum;]

[(3) Has successfully completed a fire service instructor training course based on the objectives of NFPA 1041, conducted by the Department of Education and approved by the commission; or]

[(4) Has successfully completed any college or university courses in instructional methodology specified and approved by the commission based NFPA Standard 1041.]

Section 3. Certification Term, Revocation, Renewal. (1) Certification of an instructor shall be made for a period of five (5) years, unless the commission determines sooner that the certification should be revoked.

(2) The commission may revoke a certification if it finds, after giving the holder an opportunity to be heard, that there was a material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification, that the holder has not engaged in fire service training and instruction activities for one (1) year, or that the holder has not been in active service in any fire department for a period exceeding six (6) months.

(3) The commission may issue a five (5) year renewal certification for any instructor by written application for renewal.

CHARLES A. COTTON, Commissioner
MELVIN WILSON, Secretary
APPROVED BY AGENCY: December 18, 1985
FILED WITH LRC: December 19, 1985 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 25, 1986 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 requrests to appear at the public hearing are received by February 20, 1986, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? No. N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
(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 December 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 November 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. 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 10. 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 11. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the October 15, 1985, 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 12. Standards for Regional Pediatric Clinics. The policies set forth in the October 15, 1985, 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 13. Standards for Preventive Health Care in Children. The policies set forth in the December 15, 1985 [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 14. Standards for Child Restraint Program. The policy set forth in the January 1, 1986, edition of the "Standards for the Child Restraint Program" manual governing the operation of safety seat loan programs conducted by local health departments are hereby adopted by reference.

Section 15. [14.] 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 16. [15.] Summary of Amendment. (1) In relation to Section 13 relating to the Standards for Preventive Health Care in Children, the manual is being revised and updated to include the incorporation of the most recent Federal Poverty Income Guidelines, eligibility for all children enrolled in the Regional Pediatric Clinic Program, updated immunization guidelines, the deletion of the MCH-39 manual reporting form and a description of the automated reporting/reimbursement system. Attachment A - Chart Audit Tool is deleted and Attachment A - Chart Audit Tool (revised 12-15-85) inserted.

(2) In relation to Section 14 of this regulation, the Child Restraint Program Standards manual is being incorporated by reference as Section 14 of this regulation. The Child Restraint Program Standards have been developed to provide guidance to local health departments in operating a loan program and to provide a statewide standard for program management. Local health departments will receive funds to purchase safety seats for infants and toddlers; these seats will then be loaned to eligible health department clients. [1 of this regulation relating to the Local Health Policy Manual, revise LHP 500-1 "Overtime" is being revised to provide local health departments the option of compensating employees at a rate of pay of one and one-half (1 1/2) the regular rate for all time worked over forty (40) hours per week.]

C HERNANDEZ, M.D., M.P.H., Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: January 2, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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 13)

Agency Contact Person: Patricia K. Nicole, M.D.
(1) Type and number of entities affected: 49 local health departments.
(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): Replacement cost of seats lost or damaged.
(b) Reporting and paperwork requirements: Replacement of one manual report with existing automated reporting system..
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 14)

Agency Contact Person: Patricia K. Nicole, M.D.
(1) Type and number of entities affected: 49 local health departments.
(a) Direct and indirect costs or savings to those affected:
1. First year: Local Health Departments will incur administrative and staff costs in the operation of this program. These costs will be borne by local or state unrestricted funds.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Replacement cost of seats lost or damaged.
(b) Reporting and paperwork requirements: Existing Local Health Patient Services Reporting System will apply.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Department for Health Services will receive a grant for $100,000 to allocate to the local health departments for the pruchase of safety seats.
2. Continuing costs or savings: Depending upon availability of funds, there will be a need to replace lost or damaged seats.
3. Additional factors increasing or decreasing costs: Increased demand by low income individuals for a safety seat. Possible savings in medical costs as a result of injury.
(b) Reporting and paperwork requirements: Prevention by properly utilizing a safety seat.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: 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, 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 January 15, 1986 [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 January 15, 1986 [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 January 15, 1986 [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 January 15, 1986 [November 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 Amendments.

Section 4 is revised as follows:

EASTERN STATE HOSPITAL POLICY MANUAL

GENERAL HOSPITAL POLICY: D1, Section I, page 9
A complete revision to reflect the provisions outlined in the Governor's Cabinet's and Department's Affirmative Action Plan, including: complaint procedures, interviews, counselor positions, training, and length of counselor's term.

PERSONNEL POLICY MANUAL - D2, Section I, page 43
Policy changed to reflect a change in Educational Achievement increment authorized by the State Personnel Board.

D2 - Section I Page 69	A new policy is designed to provide security for computerized data.

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL

E1, Section D No. 2	New policy. This policy is assuring our health care professional staff meet all requirements for licensing, certification, and registration. The purpose of the policy is to know that a staff member meets necessary technical qualifications for practicing his or her profession and to assure that we meet Joint Commission for Accreditation of Hospitals. It is not anticipated that the implementation of this policy will result in additional cost or expenditure.
E1, Section E No. 4	New policy. In order to meet standards of the Joint Commission for Accreditation of Hospitals, a policy and procedure for quality assurance activities as they relate to Emergency Services was developed. Since these procedures will be a part of the Medical Staff meeting already in place, there should be no change in cost and very little additional time will be needed to implement them.

Section HH - Treatment Program - Revised Content - The content was revised to add the policies listed below.

Section HH No. 2:32 - New Policy - This policy was developed to meet standard 17.9 of the JCAH. Since this information is already being gathered, the only increase in time expended will be that required for documentation. There should be no increase in cost.

E1, Section HH, No. 8.30 - Revised policy

Policy HH 8.30 has been revised to include information contained in HH 8.60 which will be discarded. The new policy HH 8.30 will be entitled "Ward Charts." The procedures remain essentially the same; the major revision is the deletion of general information. Therefore, there should be no change in the cost of time or money for implementation.

Section HH, No. 8.80 - 3rd page revised and revision in form - 4th page located behind 8.80

The Treatment Planning Policy has been revised to incorporate procedures for patient care monitoring reviews as required by JCAH Standards. Since this revision is merely the documentation of procedures already in effect, no added expenditure of money or time is expected.

This form has been revised to include a space for documenting that the diagnosis has been reviewed. Since this revision requires only the documentation of a review already done, it is anticipated that there will be little, if any, increase in time required and no increase in cost.

Section HH No. 9.12 - New Policy - Classes regarding the use of alcohol and/or drugs are available to patients upon referral by their treatment teams. This policy and procedure documents an educational service already in effect. Therefore, no increase in staff time or financial expenditure is expected.

Section R No. 9 - Revised policy - The Fiscal Services Quality Assurance Committee discussed that the present limits set up for the replacement of clothing damaged by an acting out patient, were not in keeping with today's higher prices for clothing. There should be no change in cost and very little additional time will be needed.

E-2 - Nursing Manual

Section 11.15 - Urinary Tract Infection
Section 11.16 - Bronchitis
Section 11.17 - Vaginal Infections
Section 11.18 - Eye Infection
Section 11.19 - Pneumonia
Section 11.20 - Otitis Media
Section 11.21 - Tonsilitis
Section 11.22 - Pharyngitis
Section 11.23 - Skin Infections

The above policies have been added to meet JCAH Accreditation Standards for Infection Control. These policies cover the most frequently occurring infections at Central State Hospital.

Section 14 No. 3 - New Policy - This policy is needed to meet JCAH Standards and to continue to be accredited by JCAH. No extra cost is needed.

E1 - Volunteers

Section GG, No. 1 - Revised policy

This revision is to comply with JCAH Standards and does not require additional personnel or funds.

E1 - Dental

Section F, No. 1 - revised policy
Section F, No. 3 - revised policy
Section F, No. 6 - new policy

(Proposed changes and additions to the Dental Service Policy and Procedure have been presented to Clinical Executive Committee. Essentially the changes have been made so that the dental policies address the JCAH standards in Joint Commission language. The changes do not effect cost. They do require some additional manhours which will not create the need for more personnel but will reduce the patient treatment hours somewhat. Overall the policies and procedures represent a higher standard of care for the patients so the changes are beneficial.)

Section 6 is revised as follows:

WESTERN STATE HOSPITAL POLICY MANUAL

DISASTER PLAN
F-16, Section III
This policy was added to the manual to complete the Disaster Plan.

EMPLOYEE HEALTH MANUAL
F-32 (Volume I)
Policy has been changed due to the fact that it should have stated new employees instead of just employees under A.#2.

Policy #2 Revised to coincide with the recommendations from Christian County Respiratory Disease Center.

Policy #3 Revised to read flu vaccine will not be given to person with a history of hypersensitivity to the components.

Policy #4 Revised to include responsibility of administering Hepatitis B vaccine assigned to Employee Health Nurse.

Policy #5 Name of policy changed to more appropriate title.

Policy #6 A new policy to apply to new employees as well as existing employees.

Policy #7 A new policy to apply to new employees as well as existing employees.

Section 10 is revised as follows:

KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL

OUTPATIENT SERVICE

J-9/2 The changes in the Intake Form were made to reduce the need for typing and to use the same form for the Intake History and the Psychosocial Evaluation.

J-9/3 This procedure is being changed to reduce the time of professional staff in rewriting patient information, and to assure the accuracy of the information.

J-9/5 This procedure is being modified to include patient information necessary for records and to clarify staff responsibilities.

J-9/7 This procedure is being changed to reduce typing in conjunction with item J-9/2 above.

J-9/12 This procedure is being changed to reduce required paperwork. The data is available in the physicians' appointment book.

GENERAL HOSPITAL POLICY AND PROCEDURE
SECLUSION AND RESTRAINTS
#J-1/B-1

This policy replaces J-5/B-2 in the Security Department Policy and Procedure Manual and J-2/B-71 in the Nursing Department Policy and Procedure Manual.

The policy statement clarifies the four (4) types of accepted restraint orders. It also stated what is not considered restraint and/or seclusion situations.

Section A, 2, of the "new" policy explains the three (3) types of seclusion orders.

Section B, 5, and B, 6, changed to insure closer observation by Nursing and Security supervisors. Security supervisors must also review documentation.

Section D, 5, states types of information charged and when appropriate.

SECURITY DEPARTMENT POLICY AND PROCEDURE

J-5/A-1 Section G omitted as this is covered in J-1/A-45.
Section I added to make a direct reference to J-1/A-45.

J-5/A-9 Section B and D, wording changes only.

J-5/A-18 Section D, 4, omitted as it is no longer necessary.
Section G added: clarifies duties of position.

J-5/A-12 Section A, I, states amount issued.
Section A, K, adds new equipment.
Old Section A, K, omitted: not issued.
Section F clarifies procedure when employment is terminated.
Section E, explains new manner of issuing clothing.

J-5/A-24 Section 8 added: ensures supervisor to be on the scene of any incident and all required documentation completed.
Section 9 added: allows for supervisor to take charge of situation.

J-5/A-25 Section C omitted: changes in Section C and D reflect change in procedure.

J-5/A-26 Section C omitted: change reflects procedural differences.
Section G omitted: no longer a procedure.
Section H omitted: unnecessary repeating in procedure.

J-5/A-28 Omitted from manual as this procedure is covered in several other policies.

J-5/A-29 Section B changed to reflect change in procedure.

J-5/A-30 Section C changed to more clearly define officer's duties.
Section F added to clarify to officer what to do with uncooperative workers.

J-5/A-31 Section 2-C, changed to reflect scheduled count at 4:00 p.m.
Section 8.B specifies sequence of responding to count and when count is clear.
Establishes visiting area as an accountable unit when applicable.
Section D.4.b, changed to designate visiting as accountable for counts.

J-5/A-32 Section B.1, changed to prevent "break" in chain of evidence.
Section B.a, clarifies that "on scene" staff member secure evidence.

J-5/A-34 Section C omitted: never was implemented in institution.

J-5/A-39 Section E omitted: keys no longer kept in control panel.

J-5/A-44 Section A, 5, omitted: only accepted officers will be informed.

J-5/A-45 Interaction and Participation in Recreational Activities with Patients New Policy written to set specific guidelines for officers when involved in recreational activities with patients; maintains accountability and purpose to staff interaction; restricts security supervisors from activities; encourages officers to get other patients involved instead of self entertainment; allows for exception when officer is assigned 1:1 with a specific patient.

J-5/B-12 Section A, 9, changed to allow Security to restrict bullpen privileges.
Section A, 10, changed to allow shift supervisors to make the decision.
Section B, 3, omitted.
Section D, 1, omitted as it is covered in another policy.

J-5/B-13 Section A changed to allow removal of coffee pot when necessary.
Section B changed to remove set standards.

J-5/B-14 Section C changed to set specific times.

J-5/B-15 Section L changed: Security is no longer able to allow phone calls.

J-5/B-17 Section A, wording changes only.

J-5/B-18 Omit policy. All information covered in policy #J-5/B-19.

J-5/B-20 Section H, rewritten to set restrictions on privilege when necessary.
Section J, changed to set restrictions and avoid confusion.

J-5/B-24 Section B changes location of medication being dispensed.
Section C omitted.

J-5/B-3 Omit Section A covered in Section B. Charting required on all patients every day by officers.
Section B clarifies that charting be done daily on all patients by officers.
Section M omitted: covered in vital sign policy in Nursing manual. Charting of vital signs now being done by Ward Clerks, not the officers.

J-5/B-4 Section A, 18, added to approve headbands as approved clothing items.
Sections C, 1; C, 3; C, 4; C, 6; changed to allow increased amounts.
Sections D, 1; D, 2; D, 3; D, 4; and D, 5 changed to allow only state-issued linens.
Section E, footnote changed to allow approval of appliances to Unit Lieutenant on post-convicted units only. Also, now stated appliances must be inspected by the Fire & Safety Officer.
Section F, 10, omitted: art supplies are no longer permitted in patient rooms.
Section G, 3, changed: hardback books are no longer permitted.
Section I, 7, added.

J-5/B-9 Section D, 6, changed to allow heabands.
Section F, 3, clarifies restricted area.

[Section 10 is revised as follows:

KENTUCKY CORRECTIONAL PSYCHIATRIC CENTER POLICY MANUAL

Policy
#J1 B-34 A new policy is developed to provide for hospitalization of inmates committed to the Corrections Cabinet. This policy also provides for hospitalization of inmates on an involuntary basis according to KRS Chapter 202A and in compliance with Vitek vs. Jones. This new policy

brings the policies and procedures of the Kentucky Correctional Psychiatric Center in compliance with existing policies of the Corrections Cabinet.]

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: January 6, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: This regulation with the attached reference material is the on-going policy and procedure manual of the state facility for the treatment of patients with mental illness and mental retardation. These facilities function with 2,880 staff members serving 1,850 residents.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: 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.
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
(Proposed Amendment)

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.848
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.848 [directs the Secretary of the Cabinet for Human Resources] to provide by regulation for a reasonable schedule of fees and charges to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for the renewal thereof and for inspections and environmental surveillance activities conducted by the cabinet. The purpose of this regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This regulation relating to fees applies to all applicants, registrants and licensees of radiation producing machines and radioactive materials, except governmental agencies.

Section 2. Schedule of Annual Fees and Charges. The following schedule of annual fees applies to radiation producing machine registrants and radioactive material licensees. All applications for registration or licensing, or annual renewals thereof, shall be accompanied by the appropriate fee set forth below:
(1) X-ray tubes:
(a) Each diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp; or industrial x-ray tube - $25.
(b) Each therapeutic x-ray tube capable of operating at 150 kVp or above (including particle accelerators) - $35.
(c) Any other x-ray tube not specified above - $25.
(d) The total registration fees charged for x-ray tubes at any institution, facility or office shall not exceed - $200.
(2) Radioactive material licenses:
(a) Human use of radioactive, source, or special nuclear material - $200.
(b) Use of radioactive material authorized by an in vitro or in vivo registration certificate - $30
(c) Industrial radiography; wireline service; nuclear pharmacy (including distribution) - $200.
(d) Processing, manufacturing or distribution of radioactive, source, or special nuclear material or items containing radioactive, source or special nuclear material - $400.
(e) Industrial gauging, measuring, level detection, or similar use - $100.
(f) All other radioactive, source, or special nuclear material licenses not specified above - $100.
(g) The licensing fee charged for a radioactive material license at any institution, facility or office shall not exceed - $400.
(h) Application for distribution of a new sealed source and device, or the application for the use of a custom device in addition to fees specified in paragraphs (a) through (g) of this subsection - $400.
(i) Application for amendment to an existing license - $50.

Section 3. General Requirements. (1) All registration certificates shall expire on July 31 [June 30] following the date of issuance.

(2) All renewal registration fees shall be paid on or before July 31 of each year.

(3) [(2)] All radioactive material licenses shall be renewed annually based on the expiration date stated in the license.

(4) [(3)] Payment of fees and other charges shall be submitted to Radiation Control, Cabinet for Human Resources [Department for Health Services], 275 East Main Street, Frankfort, Kentucky 40621, in the form of a check or money order payable to the Kentucky State Treasurer.

(5) [(4)] In the event a registration certificate has heretofore been issued prior to the effective date of this regulation, specifying an expiration date other than June 30, the cabinet shall upon renewal of the registration certificate specify an expiration date of June 30.

(6) [(5)] Registration and licensing application fees are non-refundable.

(7) Failure to submit any applicable fee set forth in this regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

Section 4. Exemptions. State and local governmental agencies shall be exempt from the payment of fees but shall comply with the other applicable provisions of these regulations.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:105. X-rays; general.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide general requirements for the possession, use, and operation of x-ray systems.

Section 1. Applicability. This regulation applies to all x-ray systems and to all persons, equipment, and materials used in connection with the possession, use, or operation of such systems. All x-ray systems shall comply with the requirements of this regulation and with any other regulations pertinent to the particular system employed.

Section 2. Administrative Control [General Requirements]. (1) No person shall make, sell, lease, transfer, lend, or install x-ray systems or the accessories used in connection with such systems unless such accessories and systems, when properly placed in operation and properly used, will meet the requirements of these regulations. These provisions include, but are not limited to, the delivery of cones or collimators, filters, adequate timers, and fluoroscopic shutters, where applicable.

(2) The registrant shall be responsible for directing the operation of the x-ray systems which he has registered with the cabinet. In the operation of the x-ray system, the registrant or his agent shall ensure that the following requirements are met:

(a) An x-ray system which does not meet the provisions of these regulations shall not be operated unless a specific exemption in writing has been granted by the cabinet. In the event the registrant advises an agent of the cabinet that he no longer uses an x-ray system, the cabinet may inactivate such system. Inactivated x-ray systems may be reactivated only by the cabinet or with its written permission. Inactivation of an x-ray system may be accomplished by any of the following means:

1. An inactivation seal(s), numbers and

approved by the cabinet, may be placed on an x-ray system so as to prevent energizing of the system. X-ray systems so sealed as inactive shall not be utilized and the seal or attached instructions shall not be removed without the express authorization of the cabinet.

2. The cabinet may approve the removal of portions of the x-ray system so as to render the system inoperative or so as to allow only those portions of the system to remain operative which are in compliance with these regulations. X-ray systems or portions of x-ray systems having been so inactivated shall not be operated or be made operative by reinstallation of the removed portions of the system without the express authorization of the cabinet. X-ray systems so inactivated shall be clearly labeled showing the limitations of the x-ray system. Such labels shall not be removed without the express authorization of the cabinet.

(b) Individuals operating x-ray systems shall be adequately instructed in safe operating procedures and shall be competent in the safe use of the system.

(c) Written safety procedures and rules, for the particular x-ray system shall be posted in a conspicuous place beside each x-ray system's control panel and a copy of these regulations shall be made available in each general work area.

(d) The following exposures are prohibited:

1. Exposure of an individual to the useful beam for training or demonstration purposes; and [shall be prohibited.]

2. Exposure of individuals for the purpose of mass screenings, except when authorized by a licened practitioner of the healing arts within the scope of his professional license.

(e) In the event that a patient or film must be provided with auxiliary support during a radiation exposure, the registrant shall:

1. Provide mechanical holding devices to be used when the technique permits;

2. Provide written safety procedures, as required by this regulation, which shall indicate the requirements for selecting a person to hold a patient or film and the procedure which the holder of such shall follow;

3. Provide the human holder with protection from radiation exposure as required by these regulations; and

4. Ensure that no person is used routinely to hold film or patients.

(f) In the event that protective clothing is worn on portions of the body and a monitoring device(s) are required, at least one (1) such monitoring device [the following rules] shall be utilized as follows [apply]:

1. When an apron is worn, the monitoring device shall be worn at the neck area outside of the apron; and

2. If more than one (1) device is used and a record is made of the data, each does shall be identified with the area where the device was worn on the body.

(g) A personnel monitoring device shall not be exposed to deceptively indicate a dose delivered to an individual.

(h) The registrant shall maintain a record for each x-ray system. Such record shall include but to be limited to the following:

1. Maximum rating of [Written] technique factors;

2. [Written] Tube rating charts and cooling curves; and

3. [Written] Records of all surveys, calibrations, maintenance, and modifications performed on the x-ray system [after the effective date of these regulations,] along with the names of persons who performed the service.

(i) Each installation shall be provided with such primary barriers and secondary barriers as are necessary to ensure compliance with these regulations. This requirement shall be deemed to be met, if the thickness of such barriers are equivalent to those as computed in accordance with the National Council of Radiation Protection Report No. 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to 10 MeV." [34, "Medical X-Ray and Gamma Ray Protection for Energies Up to 10 MeV (Structural Shielding Design and Evaluation)."]

(j) In the event that a darkroom is used in connection with an x-ray system the following requirements shall apply:

1. The darkroom shall be constructed so that film being processed, handled, or stored will be exposed only to light which has passed through a safe light filter; and

2. Adequate safety lighting shall be provided in each darkroom such that the radiance and spectral emissions of the safelight, bulb and filter combination, shall not fog (the film) above the base fog level when exposed for one (1) minute at a distance of 120 centimeters from the lamp(s). Film manufacturer's recommendations for a safelight and its placement shall be adjudged to meet this criterion.

(k) Automatic processors and other closed processing systems shall meet the following requirements:

1. Preventive maintenance shall be performed on the unit, except for extended periods of non-use, on a frequency basis which is not less than that schedule recommended by the manufacturer. In the event that no schedule is available from the manufacturer, a maintenance schedule shall be established which will preserve good film quality; and

2. After a full cleansing of the processor, a film shall be exposed to a density of approximately one (1), with one-half (1/2) of the film protected from the exposure. Such film shall be developed and then kept near the unit and at least one (1) test film daily (exposed under techniques identical with those used for the original test film) shall be compared with the original test film to evaluate the adequacy of the unit's developing capability and base fog level.

(l) Manual processing systems shall meet the following requirements:

1. A device shall be available which will indicate the actual temperature of the developer in degrees Fahrenheit or Celsius;

2. The amount of time that the film remains in the developer solution shall be controlled. At the end of a preset time interval, the timing mechanism used for controlling the development time shall provide a visible or audible signal;

3. A time-temperature technique consistent with the film or developer manufacturer's requirements shall be used; and

4. A temperature control system shall be available to maintain the temperature of the developing solution within the range specified by the manufacturer. A means shall be provided to control the temperature of the fixer and the rinse water to within five (5) degrees

Fahrenheit of the temperature of the developer solution. Exceptions to the requirements of this subparagraph may be authorized by the cabinet on the basis of a written request providing details of the developing procedure to be used, methods of controlling developing conditions, and an adequate justification for such exception.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:110. Registration of x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to regulate the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide for the registration of radiation producing machines in Kentucky.

Section 1. Applicability. This regulation applies to all radiation producing machines received, possessed, used, or transferred in the Commonwealth of Kentucky. The provisions of this regulation are in addition to all other applicable radiation regulations.

Section 2. Registration. (1) The owner or person having possession of any radiation producing machine or accelerator except those specifically exempted in Section 4 of this regulation shall register such within ten (10) days after acquisition. Registration under this section shall be on forms furnished by the cabinet and shall contain the following information and such other information as may be required:
(a) Name and address of the owner or person having administrative control and responsibility for use.
(b) Address where the machine is located and used, except that a central headquarters address may be given for a mobile machine used at various temporary field locations.
(c) A description of the type, model, serial number of the radiation machine and its rated capacity in peak kilovolts and milliamperes.
(d) A designation of the general category of use (dental, medical, industrial, veterinary, research, or other).
(e) Date of application and signature of registrant.
(2) The registrant shall notify the cabinet within ten (10) days of any change which increases the rating of the machine or of any change which renders the information required in subsection (1) of this section no longer accurate. A change of ownership or possession of the machine shall terminate the registration.
(3) Each registrant, or his estate, if decreased, who permanently discontinues the use of or transfers radiation machines at an installation shall notify the cabinet in writing within thirty (30) days of such action. In the event of a transfer, the notification shall include the name and address of the transferee.
(4) No person in any advertisement shall refer to the fact that a radiation machine is registered with the cabinet, and no person shall state or imply that any activity under such registration has been approved by the cabinet.
(5) The registrant shall be subject to all applicable requirements of these regulations.
(6) Whenever any radiation machine is to be brought into this state, the person proposing to bring such machine into the state shall give written notice to the cabinet at least two (2) days before such machine enters the state. The notice shall include the type of radiation machine; the name of the individual in charge; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If for a specific case the two (2) day period would impose an undue hardship on the person, he may, upon application to the cabinet, obtain permission to proceed sooner. In addition, the out-of-state person must:

(a) Comply with all applicable regulations of the cabinet; and

(b) Supply the cabinet with such other information as the cabinet may reasonably request.

(7) No radiation producing machines shall be operated without a valid registration as stipulated in these regulations.

Section 3. Vendor Obligation. (1) the distributor, retailer or other agent who sells, leases, transfers, [or] lends, or installs radiation producing machines shall notify the cabinet within thirty (30) days after the end of each calendar quarter of:

(a) The names and addresses of persons who have received these machines; and

(b) The manufacturer, model, and serial number of each machine transferred; and

(c) The date which the machine(s) were sold, leased, transferred, or loaned.

(2) No person shall make, sell, lease, transfer, lend or install x-ray equipment or the supplies used in connection with such equipment unless such supplies and equipment, when placed in operation and used, will meet the requiremens of these regulations.

Section 4. Exemptions. (1) No person shall be required to register due to the ownership or possession of the following:

(a) Electronic equipment that produces radiation incidental to its operation for other purposes provided the dose equivalent [radiation exposure] rate averaged over an area of ten (10) square centimeters does not exceed five-tenths (0.5) mrem per hour at five (5) cm from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(b) Radiation producing machines while in transit or storage incident thereto.

(2) Domestic television receivers are exempt from the requirements of this regulation. [Equipment described in subsection (1) of this section shall not be exempt if it is used or handled in such a manner that any individual might receive a radiation dose exceeding the limits specified in these regulations.]

Section 5. Radiation Safety Officer. (1) The registrant or his duly authorized representative shall designate a radiation safety officer or may personally assume the radiation safety responsibility.

(2) The person responsible for radiation safety shall:

(a) Be qualified by training and experience to assume the responsibilities of appraising himself of all hazards and precautions involved in handling the radiation machine(s) for which he is responsible.

(b) Give instructions concerning hazards and safety practices to persons who may be occupationally exposed to radiation.

(c) Provide reasonable assurance that other provisions as required by these regulations are carried out.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager

(1) Type and number of entities affected:

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

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:115. Diagnostic x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling and disposal of radioactive wastes. The purpose of this regulation is to provide [special] requirements for the possession, use, and operation of all diagnostic x-ray systems in relation to the healing arts.

Section 1. Applicability. This regulation

applies to all diagnostic x-ray systems in relation to the healing arts and to all persons, equipment and materials used in connection with the possession, use or operation or such systems.

[Section 2. Maintenance Program. For all x-ray components or systems which have been installed and certified under the federal performance standard, a maintenance program shall be established to ensure that such components or systems maintain certification status. The frequency of tests or measurements under this maintenance program shall not exceed one (1) year. Records of tests or measurements performed under the maintenance program shall be maintained by the registrant.]

Section 2. [3.] Warning Label. The control panel containing the main power switch shall bear the following warning statement or an equivalent statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

Section 3. [4.] Battery Charge Indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

Section 4. [5.] Leakage Radiation from the Diagnostic Source Assembly. The leakage radiation from the diagnostic [x-ray] source assembly measured at a distance of one (1) meter in any direction from the [x-ray] source shall not exceed 100 milliroentgens in one (1) hours when the x-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than twenty (20) centimeters.

Section 5. [6.] Radiation from Components other than the Diagnostic Source Assembly. The radiation emitted by a component other than the diagnostic [x-ray] source assembly shall not exceed two (2) milliroentgens in one (1) hour at five (5) centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than twenty (20) centimeters.

Section 6. [7.] Beam Quality. (1) The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following table:

TABLE OF ACCEPTABLE HALF-VALUE LAYER (HVL)

Design operating range (Kilovolts peak)	Measured potential (Kilovolts peak)	Half-value Layer (Millimeters of aluminum)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

(2) If it is necessary to determine the half-value layer at an exposure tube potential which is not listed in the table above, linear interpolution or extrapolation may [shall] be made [within the range of the table];

(3) The above HVL criteria will be considered to have been met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in the following table:

TABLE OF FILTRATION REQUIRED VS. OPERATING VOLTAGE

Operating Voltage (kVp)	Total Filtration (inherent plus added) (millimeters aluminum equivalent)
Below 50	0.5 [millimeters]
50 - 70	1.5 [millimeters]
Above 70	2.5 [millimeters]

(4) X-ray tubes with beryllium windows shall have a minimum of five-tenths (0.5) mm aluminum equivalent filtration permanently mounted in the useful beam;

(5) For capacitor energy storage equipment, compliance shall be determined with the maximum quantity of charge per exposure; and

(6) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials which are always present between the focal spot of the tube and the patient (e.g., a tabletop when the tube is mounted "under the table" and inherent filtration of the tube). [; and]

[(7) When half-value layers must be measured below 30 kVp or above 150 kVp the cabinet will evaluate each x-ray system's filtration requirements on a system by system basis, in a manner consistent with these regulations taking into account the intended use of each system.]

Section 7. [8.] Filtration Controls. For x-ray systems [certified under the federal performance standard] which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) which will prevent an exposure unless the minimum required amount of filtration is in the useful beam for the given kVp which has been selected.

Section 8. [9.] Mechanical Support of the Tube Head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the x-ray system.

Section 9. [10.] Technique and Production [X-ray Generation] Indicators. (1) The technique factors to be used during an exposure shall be indicated before the exposure begins. If

automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated. [The control panel shall include a device (usually a milliampere meter) which will give positive indication of the production of x-rays whenever the x-ray tube is energized. The control panel shall include appropriate indicators (labeled control settings or meter) indicating the physical factors, such as kVp, mA, and exposure time, used for the exposure.]

(2) The requirement of technique indicators may be met by permanent markings on equipment having fixed technique factors. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(3) A means shall be provided which will give positive indication of the production of x-rays whenever the x-ray tube is energized.

(4) On machines certified under the federal performance standard, a visual indication of the production of x-rays and an audible signal indicating the exposure is terminated shall be provided.

Section 10. [11.] Timers. All timers shall meet the following requirements: (1) A means shall be provided to automatically terminate the exposure at a preset time interval, preset product of current and time, preset number of pulses, or a preset radiation exposure of the image receptor;

(2) Automatic termination of the exposure shall cause automatic resetting of the timer to its initial setting or to zero, except for dental panoramic systems. The timer shall not be capable of making an exposure when the timer is set to a zero or off position if either is provided;

[(3) All timers shall be accurate to within plus or minus ten (10) percent of the value indicated on the timer at the start of the exposure; and]

(3) [(4)] When four (4) timer tests are performed at identical timer settings, the average time period (Tave) shall be greater than five (5) times the maximum period (Tmax) minus [less] the minimum period (Tmin), (Tave) greater than five (5) (Tmax minus Tmin).

Section 11. [12.] Exposure Switch. The exposure switch shall be of the dead-man type.

Section 12. [13.] Exposure Reproducibility. The exposure produced shall be reproducible so that when all technique factors are held constant, the coefficient of variation shall not exceed one-tenth (0.1). This requirement shall be deemed to have been met if, when four (4) exposures at identical technique factors are made, the value of the average exposure (Eave) is greater than five (5) times the maximum exposure (Emax) minus [less] the minimum exposure (Emin), (Eave) greater than five (5) (Emax minus Emin). When the diagnostic x-ray system is certified, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05 for any specific combination of selected technique factors.

Section 13. [14.] Technique [Examination] Chart. In the vicinity of each x-ray system's control panel a chart shall be provided which specifies for all examinations which are performed by that system a list of information for each projection within that examination. Such chart shall include but not be limited to the following:

(1) The patient's anatomical size versus technique factors to be utilized;

(2) The type and size of the film or film-screen combination to be used;

(3) The type and focal distance of the grid to be used, if any;

(4) The source to image receptor distance to be used; and

(5) The type and location of gonadal shielding to be used, if any.

Section 14. [15.] Personnel in X-ray Room. Except for patients who cannot be moved out of the room, only staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiographic exposure. Such patients and personnel shall be protected as follows:

(1) Other than the patient being examined, all individuals in the x-ray room shall be positioned such that no part of the body not protected by five-tenths (0.5) mm lead equivalent, will be struck by the useful beam.

(2) Staff and ancillary personnel shall be protected from direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent;

(3) Patients who cannot be removed from the room shall be protected from the direct scatter radiation by whole body protective barriers of not less than 0.25 mm lead equivalent or shall be so positioned that the nearest portion of the body is at least two (2) meters from both the tube head and the nearest edge of the image receptor; and

(4) When a portion of the body of any staff or ancillary personnel is potentially subjected to stray radiation which could result in that individual receiving one-quarter (1/4) of the maximum permissible dose as defined in these regulations, additional protective devices may be required by the cabinet.

Section 15. [16.] Examination Information. Each facility shall maintain written records of each examination. Such records shall include but not be limited to the following:

(1) Appropriate patient identification data, such as name, social security number, age and sex;

(2) Date of examination;

(3) A description of the examination or treatment given by routine or local title as denoted on the technique chart;

(4) Any deviation from standard procedure or technique, including all repeat exposures, as denoted in the technique chart;

(5) The x-ray system used, when there is more than one (1) system per facility;

(6) the name of the person who performed the exam; and

(7) the name of the individual who ordered the exam.

Section 16. [17.] Image Interpretation. Each image (film, film set, etc.) shall be interpreted by a licensed practitioner, and a permanent record shall be made of the interpretation of the total examination.

Section 17. [18.] Gonadal Shielding. Gonadal shielding of not less than 0.25 millimeter lead equivalent, shall be used during radiographic [diagnostic] procedures in which the gonads are in the primary beam except for cases in which this would interfere with the diagnostic procedure. [Such shielding shall not be less than:]

[(1) 0.25 mm lead equivalent when 100 kVp or less is used;]

[(2) 0.5 mm lead equivalent when 100 to 150 kVp is used;]

[(3) 1.0 mm lead equivalent when greater than 150 kVp is used.]

Section 18. [19.] Procedures and Aucillary Equipment. Procedures and aucillary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. Such procedures and equipment shall include but not be limited to the following:

(1) the speed of the film or film and screen combination shall be the fastest consistent with the diagnostic objective of the examination; and

(2) Portable and mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(3) Radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

Section 19. [20.] Multiple Tubes. Where two (2) or more radiographic tubes are controlled by one (1) exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected. [Visual and Audible Signal Generator on Federal Performance Standard Equipment. On all machines certified under the federal performance standard, the x-ray control shall provide visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:120. Special x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of all radiographic x-ray systems used in relation to the healing arts, except systems used for dental intraoral or veterinary radiography.

Section 1. Applicability. This regulation applies to all radiographic x-ray systems used in relation to the healing arts, except dental intraoral or veterinary radiographic and to all persons, equipment and materials used in connection with the possession, use or operation of such systems.

Section 2. Permanent Structural Shielding. Permanent structural shielding and protective barriers shall be used as necessary to insure that no person other than the patient receives a dose equivalent in excess of the limits specified in these regulations.

Section 3. Beam Limitation. (1) Primary beam shall be restricted by cones, shutters, diaphragms, or adjustable collimators to an area no greater than the area of clinical interest

and in no case shall the dimensions of the x-ray field exceed the dimensions of the image receptor except as follows:

(a) All dimensions of the x-ray field, measured in the plane of the image receptor, shall not exceed the corresponding dimensions of the image receptor by more than three (3) percent of the source to image receptor distance (SID) measured when the plane of the image receptor is perpendicular to the primary ray of the x-ray field; and

(b) The sum of the difference between any two (2) perpendicular dimensions of the x-ray field and the respective perpendicular dimensions of the image receptor intersecting at the center of the x-ray field shall not exceed four (4) percent of the source to image receptor distance. This paragraph shall not be construed to require enlarging the x-ray field size when the x-ray field size is less than the size of the image receptor.

(2) A means shall be provided to align the center of the x-ray field with the center of the image receptor to within two (2) percent of the SID;

(3) General purpose stationary x-ray systems certified under the federal performance standard shall also meet the following requirements;

(a) There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at an SID (the distance from the x-ray tube anode to the x-ray film) of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters;

(b) A means shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two (2) percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam;

(c) A means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two (2) percent of the SID, and to indicate the SID to within two (2) percent; and

(d) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted. Indication of field size dimensions and SID's shall be specified in inches or centimeters, and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within two (2) percent of the SID when the beam axis is perpendicular to the plane of the image receptor.

(4) Mobile x-ray systems certified under the federal performance standard shall also meet the following requirements:

(a) There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at an SID (the distance from the x-ray tube anode to the x-ray film) of 100 centimeters shall be equal to or less than five (5) by five (5) centimeters; and

(b) A means shall be provided for visually defining the perimeters of the x-ray field, the total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two (2) percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

Section 4. X-ray Control (Exposure Switch). (1) A control shall be incorporated into each x-ray system such that an exposure can be terminated at any time except for exposures of one-half (1/2) second or less, or during serial radiography when a means shall be provided to permit completion of any single exposure of the series in process.

(2) The location of x-ray exposure controls on stationary x-ray systems shall be regulated as follows:

(a) Stationary x-ray systems shall be required to have the x-ray control permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure [The operator's station at the exposure control shall be behind a protective barrier, either in a separate room, or in a protective booth, or behind a shield which will intercept the useful beam and any radiation which has been scattered only once]; and

(b) The exposure controls shall be behind a window of lead equivalent glass equal to that required by the adjacent barrier or an appropriate viewing system shall be provided so that the operator can see the patient without having to leave the protected area during the exposure.

(3) Mobile and portable x-ray systems which are used for one (1) week or more in one (1) location (one (1) room or suite), shall be considered stationary for the purposes of this regulation and such systems shall meet the requirements of subsection (2)[(a)] of this section.

(4) Mobile and portable x-ray systems which are used in one (1) location less than one (1) week, shall be controlled in such a way as to allow the operator to be at least three and six-tenths (3.6) meters from the tube, patient, and from the useful beam during an exposure.

Section 5. Automatic Exposure Controls (Phototimers). In the event an automatic exposure control is utilized, the following requirements shall be met:

(1) An indicator shall be provided on the control panel to indicate when this mode of operation is selected;

(2) When the x-ray tube potential is equal to or greater than fifty (50) kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two (2) pulses;

(3) The minimum exposure time for all equipment other than that specified in subsection (2) of this section shall be equal to or less than one-sixtieth (1/60) second or a time interval required to deliver five (5) mAs, whichever is greater.

(4) Either the product of peak x-ray tube potential, current, and exposure time shall be limited to not more than sixty (60) kWs per exposure or the product of x-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except when the x-ray

tube potential is less than fifty (50) kVp in which case the product of x-ray tube current and exposure time shall be limited to not more than 2000 mAs per exposure; and

(5) A visible signal shall indicate when an exposure has been terminated at the limits described in subsection (4) of this section, and manual resetting shall be required before further automatic time exposures can be made.

Section 6. Source to [of] Skin or Image Receptor Distance. (1) All mobile or portable radiographic x-ray systems shall be provided with a durable, securely-fastened means [(e.g., collimators, cones, etc.)] to limit the source to skin distance to not less than thirty (30) centimeters.

(2) All radiographic x-ray systems shall be equipped with a device or reference, other than a collimator light localizer, which shall indicate reference, or measure the selected source to receptor distance to within two and five-tenths (2.5) centimeters.

Section 7. Standby Radiation from Capacitor Energy Storage Equipment. Radiation emitted from the x-ray tube when the exposure switch or timer is not activated shall not exceed a rate of two (2) milliroentgens per hour at five (5) centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

Section 8. Personnel Monitoring. Personnel monitoring shall be required for all individuals operating portable or mobile x-ray systems.

Section 9. Linearity. On x-ray systems certified under the federal performance standard, when the equipment allows a choice of x-ray tube current settings, for any fixed x-ray tube potential within the range of forty (40) to 100 percent of the maximum rating, the average ratios of exposure to the indicated milliampere-seconds product obtained at any two (2) consecutive tube current settings shall not differ by more than one-tenth (0.1) times their sum: $|\bar{X}_1 - \bar{X}_2| \leq 0.10\ (\bar{X}_1 + \bar{X}_2)$.
[Photofluorographic Systems. The hood assembly containing the image receptor on photofluorographic systems shall be mechanically linked to the tube housing assembly so that the fluorographic screen always intercepts the useful beam.]

[Section 10. Patient Protection. In those cases where the patient must hold the film, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:125. Fluoroscopic.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of all fluoroscopic x-ray systems in the healing arts.

Section 1. Applicability. This regulation applies to all fluoroscopic x-ray systems and to all persons, equipment and materials used in connection with the possession, use or operation of such systems.

Section 2. Equipment. All fluroscopic x-ray systems shall meet the following requirements:
(1) The tube housing assembly shall be of the

diagnostic type;

(2) Cones or shutters used to restrict the size of the useful beam shall provide the same degree of attenuation as required of the tube housing; and

(3) Fluoroscopic imaging devices used for optical viewing which are not mechanically linked to the x-ray tube shall not be utilized.

Section 3. Protective Barrier and Field Size.

(1) The fluoroscopic tube shall not be capable of producing x-rays unless the primary protective barrier is in position to intercept the entire useful beam.

[(2) In addition all image-intensified fluoroscopic x-ray systems shall meet the following requirements;]

(2) [(a)] The entire cross-section of the useful beam shall be intercepted by the primary protective barrier of the fluoroscopic image assembly at any SID (e.g., source to image receptor distance). [; and]

[(b) A means shall be provided to reduce the x-ray field size to five (5) by five (5) centimeters or less at the maximum source to image receptor distance.]

Section 4. Limitation to the Imaging Surface. The x-ray field shall be restricted such that the following requirements are met:

(1) [The x-ray field produced by] On non-image-intensified fluoroscopic x-ray systems, the x-ray field shall not extend beyond the entire visible area of the image receptor. This requirement applies to field size during both fluoroscopic procedures and spot filming procedures. [This requirement is met if when the adjustable shutters are opened to their fullest extent, an unilluminated margin is visible on all sides of the fluorescent screen with the screen centered in the beam at a distance of thirty-five and five-tenths (35.5) centimeters from the panel or the table top. Collimators located between the image receptor and patients shall not be used to fulfill this requirement;] In addition:

(a) Means shall be provided for stepless adjustment of the field size;

(b) The minimum field size at the greatest SID shall be equal to or less than five (5) by five (5) centimeters;

(c) Equipment manufactured after February 25, 1978, when the angle between the image receptor and the beam axis of the x-ray beam is variable, shall be provided with the means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor; and

(d) Compliance with this subsection shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor; or

(2) On non-certified image-intensified fluoroscopic systems with manual shutter controls, the x-ray beam shall not exceed the area of the largest image receptor, when measured with the fluoroscopic image assembly positioned thirty-five and five-tenths (35.5) centimeters from the table top or panel surface, and with the manual shutter controls opened to the fullest extent. Collimators located between the image receptor and patients shall not be used to fulfill this requirement. Means shall be provided to reduce the x-ray field size to five (5) by five (5) centimeters or less at the maximum SID; or

(3) For image-intensified fluoroscopic equipment with automatic shutter controls, neither the length nor width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three (3) percent of the SID. The sum of the excess length and width shall be no greater than four (4) percent of the SID. [Fluoroscopic systems with automatic shutter control shall meet the following requirements:]

(a) For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor. [The x-ray beam, when used for spot-filming, shall automatically open to the desired spot film area. While in this mode, it shall not be possible to perform fluoroscopy; and]

(b) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or a visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field. Equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with either stepless adjustment of the x-ray field or with means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of five (5) by five (5) centimeters or less. [The x-ray beam, when used for fluoroscopy, shall automatically open to an area no larger than the image receptor area. With the automatic shutter controls opened to the fullest extent, the edge of each shutter must still be visible on the viewing device normally used at all source to image receptor distances.]

(c) For equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor.

(4) Spot film devices which are certified components shall meet the following additional requirements:

(a) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of the portion of the film which has been selected on the spot film selector. Such adjustment shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the x-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;

(b) It shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, five (5) by five (5) centimeters;

(c) The center of the x-ray field in the plane of the film shall be aligned with the center of

the selected portion of the film to within two (2) percent of the SID; and

(d) On spot film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

Section 5. Activation of the Fluoroscopic Tube. X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of any exposure. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure at any time, but means may be provided to permit completion of any single exposure of the series in process.

Section 6. Exposure Rate Limits. The entrance exposure rate allowable limits and requirements are as follows:

(1) The exposure rate at the point where the center of the useful beam enters the patient shall not exceed ten (10) roentgens per minute, except during recording of fluoroscopic images or when provided with optional high level control; [. Exposure rate limits shall be measured in the following manner:]

[(1) Movable grids, collimators and compression devices shall be removed from the useful beam during the measurement;]

(2) When provided with optional high level control, the equipment shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of five (5) roentgens per minute at the point where the center of the useful beams enters the patient unless the high level control is activated. [If the x-ray source is below the table, the exposure rate shall be measured one (1) centimeter above the table top or cradle;]

(a) Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator.

(b) A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(3) Certified systems which do not incorporate an automatic exposure control shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of five (5) roentgens per minute at the point where the center of beam enters the patient except during recording of fluoroscopic images or when provided with an optional high level control; [If the x-ray source is above the table, the exposure rate shall be measured at thirty (30) centimeters above the table top with the end of the beam limiting device or spacer as close as possible to the point of measurement;]

(4) Compliance with the entrance exposure rate limits shall be determined as follows: [In a C-arm type of fluoroscope, the exposure rate shall be measured thirty (30) centimeters from the input surface of the fluoroscopic imaging assembly;]

(a) Moveable grids and compression devices shall be removed from the useful beam during the measurement;

(b) If the source is below the table, exposure rate shall be measured one (1) centimeter above the tabletop or cradle;

(c) If the source is above the table, the exposure rate shall be measured at thirty (30) centimeters above the tabletop with the end of the beam limiting device or spaces positioned as closely as possible to the point of measurement;

(5) Periodic measurements of the exposure rate [create] shall be made. An adequate period for such measurements shall be annually or after any maintenance of the system which might affect the exposure rate;

(a) [(6)] Results of these measurements shall be posted where any fluoroscopist may have ready access to them while using that fluoroscopic x-ray system and in the records required by these regulations. Results of the measurements shall include the [maximum possible] exposure rate in roentgens per minute, as well as the physical factors used to determine all data, the name of the person who performed the measurements, and the date the measurements were performed;

(b) Conditons of periodic meansurement of entrance exposure rate are as follows:

1. [(7)] The kVp shall be the [peak] kVp typical of clinical use of the x-ray system [that the fluoroscopic x-ray system is capable of producing];

2. [(8)] The measurement shall be made under the conditions of subsection (4) of this section [high level control, if present, shall not be activated];

3. [(9)] Fluoroscopic x-ray system(s) that incorporate automatic exposure control (e.g., automatic brightness control) shall have sufficient material [(e.g., lead or lead equivalence)] placed in the useful beam to produce a [the maximum] milliamperage typical of the use of the fluoroscopic x-ray system; and

4. [(10)] Fluoroscopic x-ray system(s) that do not incorporate automatic exposure control shall utilize a [the maximum] milliamperage typical of the clinical use of the fluoroscopic x-ray system. Materials (e.g., an attenuation block) should be placed in the useful beam to protect the imaging system.

Section 7. Radiation Rate Limits Transmitted Through the Primary Barrier. The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed two (2) milliroentgens per hour at ten (10) centimers from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate. The transmitted exposure rate shall be measured so that the following requirements are met:

(1) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than twenty (20) centimeters;

(2) If the x-ray source is below the table top, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned thirty (30) centimeters above the table top;

(3) If the x-ray source is above the table top and the SID is variable, the measurement shall

be made with the end of the beam limiting device or spacer as close to the table top as it can be placed, provided that it shall not be closer than thirty (30) centimeters;

(4) Movable grids and compression devices shall be removed from the useful beam during the measurement; and

(5) The attenuation block shall be positioned in the useful beam ten (10) centimeters from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

Section 8. Indication of Tube Potential and Current. During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated on the control panel or within view of the fluoroscopist.

Section 9. Source to Skin Distance. The source to skin distance shall not be less than:

(1) Thirty-eight (38) centimeters on stationary fluoroscopes certified under the federal performance standard [registered after the effective date of this regulation];

(2) Thirty-five and five-tenths (35.5) centimeters on stationary fluoroscopes which are not certified under the federal performance standard [in operation prior to the effective date of these regulations];

(3) Thirty (30) [and five-tenths (30.5)] centimeters on all mobile fluoroscopic x-ray systems; or

(4) Twenty (20) centimeters for image intensified fluoroscopes used for specific surgical applications. The written safety procedures [user's operating manual] shall provide precautionary measures to be adhered to during the use of this device.

Section 10. Fluoroscopic Timer. A means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray system. The fluoroscopic x-ray system shall not be able to be activated without this timer also being activated. The end of the pre-determined period of irradiation shall be indicated by an audible signal or by interruption of the irradiation. Such audible signal or interruption shall continue until the timing device is reset. The maximum cumulative time of the timing device shall not exceed five (5) minutes without resetting.

Section 11. Mobile Fluoroscopes. Mobile fluoroscopic systems shall always be provided with image intensification. It shall be impossible to operate mobile fluoroscopic systems unless the useful beam is intercepted by the image intensifier. [Inherent provisions shall be made so that the system is not operated at a source to skin distance of less than thirty and five-tenths (30.5) centimeters.]

Section 12. Control of Scattered Radiation. (1) Fluoroscopic table designs shall be such that no unprotected part of any staff or ancillary person's body shall be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall not be less than 0.25 mm lead equivalent; and

(2) Equipment configuration design when combined with procedures shall be such that no portion of any staff or ancillary person's body, except the extreminities, shall be exposed to the unattenuated scattered radiation emanating from above the tabletop unless that individual:

(a) Is at least 120 cm from the center of the useful beam, or

(b) The radiation has passed through not less than 0.25 mm lead equivalent material (e.g., leaded drapes, Bucky slot cover[-sliding or folding] panel, or self supporting leaded curtains) in addition to any lead equivalency provided by protective aprons.

(3) Exceptions to subsection (2)(a) and (b) of this section may be made in some special procedures where a sterile field will not permit the use of the normal protective barriers. Where the use of prefitted sterilized covers for the barriers is practical, the cabinet shall not permit such exception.

Section 13. Operating Procedures and Auxillary Equipment. The following operating procedures and auxillary equipment shall be utilized, where applicable, in the operation of a fluoroscopic x-ray system:

(1) Fluoroscopy performed by technologists shall be under the direction of a radiologist and be exclusively for localization to obtain images for interpretation by licensed practitioners of the healing arts. [Fluoroscopic systems shall be operated only by licensed practitioners of the healing arts];

(2) Protective gloves of at least 0.25 mm lead equivalent shall be readily available to the fluoroscipist during every examination;

(3) the eyes of the fluoroscipist shall be adequately dark-adapted before using non-image-intensified fluoroscipic x-ray systems;

(4) Extraneous light that interfers with the fluoroscopic examination shall be eliminated;

(5) Hand-held fluoroscopic screens shall not be used;

(6) Protective aprons of at least 0.25 mm lead equivalent shall be worn by the fluoroscopist and by all persons in the fluoroscopic room except the patient during each examination;

(7) Fluoroscopic x-ray systems designed strictly for fluoroscopy shall not be used for spot filming or radiography; and

(8) Dental fluoroscopic x-ray systems without image intensification shall not be used.

Section 14. Radiation Therapy Simulation Systems. Radiation therapy simulation systems shall be exempt from the requirements of Sections 4, 6, and 10 of this regulation provided that:

(1) Such systems are designed and used in such a manner that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(2) Systems which do not meet the requirements of Section 10 of this regulation are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require in such cases that the timer be reset between examinations.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:130. Dental.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of all intraoral dental radiographic x-ray systems.

Section 1. Applicability. This regulation applies to all dental intraoral radiographic x-ray systems and to all persons, equipment and materials used in connection with the possession, use or operation of such systems.

Section 2. Source to Skin Distance. Each radiographic x-ray system designed for use with an intraoral image receptor shall be provided with a means to limit the source to skin distance to not less than:
(1) Eighteen (18) centimeters if operable above fifty (50) kilovolts peak; or
(2) Ten (10) centimeters if not operable above fifty (50) kilovolts peak.

Section 3. Field Limitation. Each radiographic x-ray system designed for use with an intraoral image receptor shall be provided with a means to limit the x-ray beam.
(1) If the minimum source to skin distance (SSD) is eighteen (18) centimeters or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven (7) centimeters; or
(2) If the minimum SSD is less than eighteen (18) centimeters, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six (6) centimeters.
(3) All intraoral radiographic systems registered after the effective date of this regulation shall be used with an open ended, shielded position indicating device.

Section 4. Operator Protection. Each installation shall be provided with a protective barrier for the operator or shall be so arranged that the operator can conveniently stand, in the judgment of the cabinet, at least one and eight tenths (1.8) meters from the patient, the tube housing assembly, and the useful beam provided that the exposure to the operator is within the limits provided by 902 KAR 100:020, Section 20.

Section 5. Operating Procedures. In performing intraoral dental radiography the following rules shall apply:
(1) Film holding devices shall be used when technique permits;
(2) Neither the tube housing assembly nor the position indicating device shall be hand-held during an exposure;
(3) The x-ray system shall be arranged and operated in such a manner that the useful beam at the patient's skin does not exceed the dimensions specified in Section 3 of this regulation.
(4) Each patient undergoing dental radiography shall be draped with a protective apron of not less than 0.25 mm lead equivalent to cover the gonadal area;
(5) Film of a USASI (USA) speed group rating of "D" or faster shall be used;
(6) All dental radiographic x-ray systems registered after March 2, 1977 [the effective date of these regulations], shall be provided with electronic timers; and
(7) Whenever patients must be immobilized during an x-ray exposure mechanical restraints shall be used when technique permits.

Section 6. Filtration. In addition to the requirements of 902 KAR 100:115, Section 6, all intraoral dental radiographic systems manufactured on and after December 1, 1980, shall have a minimum half-value layer not less than one and five-tenths (1.5) millimeters aluminum equivalent filtration permanently

installed in the useful beam.

Section 7. Linearity. On dental intraoral radiographic systems certified under the federal performance standard, when the equipment allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable federal standards, for any fixed x-ray tube potential within the range of forty (40) to 100 percent of the maximum rating, the average ratios of exposure to the indicated milliampere-seconds product obtained at any two (2) consecutive tube current settings shall not differ by more than one-tenth (0.1) times their sum.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:136. Therapeutic systems below one (1) MeV.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of all therapeutic x-ray systems which operate at energies below one (1) MeV.

Section 1. Applicability. This regulation applies to all therapeutic x-ray systems which operate at energies below one (1) MeV and to all persons, equipment and materials used in connection with the possession, use or operation of such systems.

Section 2. Leakage Radiation. When the x-ray system is operated at its leakage technique factors, the leakage radiation shall not exceed the value given below:
(1) For contact therapy systems the leakage radiation shall not exceed 100 milliroentgens per hour measured five (5) cm from any part of the tube housing;
(2) For systems operating between zero and 150 kVp and which are registered prior to March 2, 1977, [the effective date of these regulations] the leakage radiation shall not exceed one (1) roentgen in one (1) hour at one (1) meter from the source;
(3) For systems operating between zero and 150 kVp and which are registered after March 2, 1977, [the effective date of these regulations] the leakage radiation shall not exceed 100 milliroentgens in one (1) hour at one (1) meter from the source;
(4) For systems operating between 151 and 500 kVp the leakage radiation shall not exceed one (1) roentgen in one (1) hour at one (1) meter from the source; or
(5) For systems operating between 501 and 999 kVp the leakage radiation at one (1) meter from the source shall not exceed one-tenth (0.1) percent of the useful beam one (1) meter from the source [be equivalent to or less than the exposure within one (1) hour of the useful beam at one (1) meter multiplied by a factor of 0.001].

Section 3. Permanent Beam Limiting Devices [Fixed Diaphragms or Cones]. Permanent fixed diaphragms or cones used for collimating the useful beam shall provide the same or higher degree of protection as required by the tube housing assembly.

Section 4. Removable Beam Limiting Devices. Removable beam limiting devices shall for the portion of the useful beam be blocked by these devices, transmit not more than one (1) percent of the useful [original x-ray] beam at the

maximum kilovoltage and maximum treatment filter. This requirement does not apply to auxiliary blocks or materials placed in the useful beam to shape the useful beam to the individual patient.

Section 5. Adjustable Beam Limiting Devices. Adjustable beam limiting devices shall meet the following requirements:

(1) Devices installed after March 2, 1977 [the effective date of these regulations] shall, for the portion of the useful beam to be blocked by these devices, transmit not more than one (1) percent of the original beam at the maximum kilovoltage and maximum treatment filter; or

(2) Devices installed before March 2, 1977, [the effective date of these regulations] shall for the portion of the useful beam to be blocked by these devices, transmit not more than five (5) percent of the original beam at the maximum kilovoltage and maximum treatment filter.

Section 6. Filter System. The filter system shall be designed to meet the following requirements:

(1) The filters cannot be accidentally displaced at any possible tube orientation [Accidental displacement of filters from the useful beam at any possible tube orientation shall be prohibited];

(2) Each filter shall be marked as to its material of construction and its thickness or wedge angles for wedges, and the filters shall be individually distinguishable.

[(3) It shall be possible for the operator to determine the presence or absence of each filter and the orientation of each wedge filter in the useful beam when the operator is at the control panel either by display on the control panel or by direct observation.]

[(4) The filters and filter insertion slot opening shall be so designed that the radiation five (5) cm from the filter insertion slot opening does not exceed thirty (30) roentgens per hour under all operating conditions; and]

(3) [(5)] Each x-ray system equipped with a beryllium or other low filtration window shall be clearly labeled as such upon the tube head housing and upon the control panel.

Section 7. Focal Spot Marking and Assembly Immobilization [Tube Housing Assembly]. The tube housing assembly shall be marked so that it is possible to determine the location of the focal spot to within five (5) millimeters and such marking shall be readily accessible for use during calibration procedures. In addition the assembly shall be capable of being immobilized during stationary treatments.

Section 8. Contact Therapy Beam Block [Tube Housing Assembly]. Contact therapy tube housing assemblies shall have a removable shield of at least 0.5 mm lead equivalent material at 100 kVp that can be positioned over the entire useful beam [exit] port during periods when the beam is not in use.

Section 9. Beam Monitor System. Therapy x-ray systems registered after March 2, 1977 [the effective date of these regulations] which are capable of operating above 150 kVp shall be provided with a beam monitoring system which meets the following requirements:

[(1) The beam monitoring system shall include a transmission detector which is a full beam detector and which is placed on the patient side of any fixed filters other than wedge filters;]

(1) [(2)] The beam monitoring system shall have a detector interlock to prevent incorrect positioning [in the useful beam];

(2) [(3)] The beam monitoring system shall have a display at the control panel, from which the absorbed dose at a reference point in the treatment volume can be calculated;

(3) [(4)] The control panel display shall maintain the reading until intentionally reset to zero;

(4) [(5)] In the event of electrical power failure the dose administered to a patient prior to the system's malfunction or power failure can be accurately determined [reading at the control panel display may be recovered at a later time];

(5) [(6)] The beam monitoring system shall not allow irradiation until a pre-selected value of exposure has [selection of a number of dose monitor units have] been made at the treatment control panel;

(6) [(7)] The beam monitoring system shall be capable of independently terminating irradiation when the [a] pre-selected exposure [number of dose monitor units] has been reached; and

(7) [(8)] The control panel display shall have only one (1) scale and no scale multiplying factors. Control panel design shall be such that increasing dose is displayed by increasing numbers [and designed so that in the event of an overdose of radiation the absorbed dose may be accurately determined under all normal conditions of use or foreseeable failures].

Section 10. Timers. Therapeutic x-ray systems shall be provided with timers which meet the following requirements:

(1) The timer shall [be graduated in minutes and decimals of minutes and] have a display at the control panel with a preset time selector and an elapsed time indicator;

(2) The timer shall be a cumulative timer which activates [switches on and off] with the production of radiation and retains its reading after irradiation is interrupted or terminated. It shall be necessary to zero the elapsed time indicator and the preset time selector after irradiation is terminated and before irradiation can be reinstated. [;]

(3) [To guard against failure of the dose monitoring systems, if present,] The timer shall terminate irradiation when a pre-selected time has elapsed; if any dose monitoring system present has not seriously terminated irradiation. [and]

(4) [If exposures are controlled by a timer, that] The timer shall permit accurate presetting and determination of exposure times [the setting of exposure timers] as short as one (1) second and shall not permit an exposure if set at zero; and [.]

(5) The timer shall not activate until the shutter is open when the irradiation is controlled by a shutter mechanism.

Section 11. Control Panel. The control panel, in addition to other display requirements of this regulation, shall meet the following requirements:

(1) The control panel shall indicate the presence of electrical power, the possibility of tube activation, the production of x-rays, and the actual kilovoltage and current across the

tube;

(2) A means shall be provided for terminating an exposure at any time;

(3) A locking device shall be provided which will prevent unauthorized use of the x-ray system; and

(4) A display shall be provided on systems registered after March 2, 1977 [the effective date of these regulations] which indicates specific filter(s) in the useful beam.

Section 12. Control Panels Which Control More Than One (1) Tube. When a control panel may energize more than one (1) x-ray tube then the following requirements shall be met:

(1) Only one (1) x-ray tube may be activated at any one time [during any one (1) time interval];

(2) The control panel shall indicate which x-ray tube is [may be] energized; and

(3) Each x-ray tube shall indicate whether that tube is [may be] energized.

Section 13. Source-to-Skin [Target to Patient] Distance. A means shall be provided to determine the source-to-skin [target to patient] distance to within one (1) centimeter.

Section 14. Shutter Control. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five (5) seconds, the entire useful beam shall be attenuated by a shutter having a lead equivalency not less than that of the tube housing. All systems using shutter control shall meet the following requirements:

(1) The shutter shall be electrically controlled by the operator from the control panel; and

(2) An indication of shutter position shall appear at the control panel. The control panel shall indicate whether the shutter is open or closed.

Section 15. Facility Design and Shielding Requirements. In addition to the shielding adequate to meet the requirements of 902 KAR 100:105, the following requirements shall also be met:

(1) Treatment rooms to which access is possible through more than one (1) entrance, shall be provided with flashing warning lights in a readily observable position near the outside of all access doors, which will indicate when the useful beam is "on". Such warning lights shall be accompanied by an appropriate sign as specified in 902 KAR 100:020, Section 20;

(2) Provision shall be made for two (2) way aural communication with the patient from the control room; however, where excessive noise levels make aural communication impractical other methods of communication shall be used;

(3) Windows, mirror systems, or closed-circuit television viewing screens or an equivalent system shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may see the patient and the control panel from the same position. When the primary viewing system is by electronic means (e.g., television) an alternate viewing system shall be available as a backup in case of electronic failure;

(4) The therapy room shall be so constructed that persons may at all times be able to escape from within; and

(5) Facilities which contain an x-ray system which may be operated above 150 kVp shall meet the following requirements:

(a) All protective barriers [necessary shielding] shall be [provided by] fixed barriers, except for entrance doors or beam interceptors. [;]

(b) The control panel shall be located [in a protected area which is] outside the treatment room [or have a door electrically connected to the control panel in such a fashion that x-ray production cannot occur unless the door is closed];

(c) All doors of the treatment room shall be electrically connected to the control panel such that x-ray production cannot occur unless the door is closed; and

(d) Interlocked doors, referred to in paragraphs (b) and (c) above, shall be provided so that if the doors are opened while the therapy tube is activated either the machine will shut off within two (2) seconds or the radiation at a distance of [on] one (1) meter from the target shall be reduced to a rate of ten (10) milliroentgens per hour or less within two (2) seconds. After such shut-off or reduction in output, it shall be possible to restore the machine to full operation only by resetting the door and by re-initiating the exposure by manual action at the control panel.

Section 16. Surveys and Calibrations. All new facilities and existing facilities not previously surveyed, shall have a radiation protection survey made by or under the direction of [the cabinet or] a qualified expert. Such a survey shall also be conducted after any change in the facility which might cause a significant increase in [produce] a radiation hazard.

(1) The registrant shall obtain a written report of this survey from the qualified expert [person conducting the survey shall report his findings in writing to the person in charge of the facility,] and a copy of this report shall be transmitted by the registrant to the cabinet.

(2) [The person conducting the survey shall calibrate the output of each therapeutic x-ray system.] The calibration of an x-ray system shall be performed at intervals not to exceed one (1) year and [repeated] after any change [in] or replacement of components [of the x-ray generating equipment] which could cause a change in the radiation [x-ray] output. Such calibration shall be performed by or under the direction of a qualified expert who is physically present at the facility during the calibration. Calibration of the radiation output [therapy beam] shall be performed with a calibrated dosimetry system [measurement instrument the calibration of] which is directly traceable to national standards [of exposure or absorber dose,] and which shall have been calibrated within the preceding two (2) years. Records of calibrations shall be maintained by the registrant for five (5) years. [Each therapeutic x-ray system shall have the calibrations repeated at time intervals not exceeding one (1) year.] The calibration shall include at least the following determinations:

(a) Verification that the system is operating in compliance with the design specifications [concerning the light localizer when applicable, and beam flatness and symmetry at the specified depths];

(b) The exposure [or dose] rate as a function

of field size, technique factors, filter, and treatment distance used [for the range and field sizes used and for each effective energy and for each treatment distance used for radiation therapy];

(c) The effective energy (e.g., half-value layer) for every combination of kVp filter used for radiation therapy;

(d) The congruence between the radiation field and field indicated by the localizing device when localizing devices are used for radiation therapy; and

(e) The uniformity of the radiation field and its dependence upon the direction of the useful beam.

(3) The calibration determinations prescribed in subsection (2) of this section shall be provided in sufficient detail such that the absorbed dose in rads to tissue adjacent to as well as in the useful beam may be calculated to within plus or minus five (5) percent of the intended absorbed dose.

(4) Therapeutic x-ray systems capable of operation at greater than 150 kVp shall also have spot checks performed which meet the following:

(a) A spot check shall be conducted at least monthly or after fifty (50) operating hours and shall include carefully selected representative or indicative measurements which will demonstrate the consistency of relevant machine operating characteristics;

(b) The spot check methods shall be in writing and shall have been designed by a qualified expert. Spot checks shall include verification of continued congruency between the radiation field and the localizing device where optical field illuminator is used;

(c) For machines in which beam quality may vary significantly, spot checks shall include beam quality checks;

(d) Whenever a spot check indicates a significant change in the operating characteristics of a machine, the machine shall be recalibrated as required by subsection (2) of this section; and

(e) Records of spot check measurements shall be maintained for two (2) years after completion of the spot check measurements.

Section 17. Operating Procedures. All therapeutic x-ray systems shall be operated so the following requirements are met:

(1) The facility shall be operated in compliance with any limitations indicated by the radiation protection survey which have been approved by the cabinet;

(2) The x-ray system shall not be used in the administration of radiation therapy unless the requirement of Section 16 of this regulation has been met [The registrant shall ensure that the unfiltered radiation from tube housing assemblies constructed with beryllium or other low-filtration windows reaches only the part intended and that the useful beam is blocked at all times except when actually being used];

(3) Therapeutic x-ray systems shall not be left unattended unless the locking device required by Section 10(3) of this regulation is set to prevent activation of the useful beam;

(4) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used whenever feasible. If the patient must be held by an individual, that individual shall be adequately protected and shall be positioned so that no part of his body will be struck by the useful beam and so that his body is as far as possible from the edge of the useful beam. The exposure of any individual used for this purpose shall be monitored and a record of such monitoring shall be maintained. No person shall routinely be used for the purpose of holding patients during exposures; and

(5) The tube housing assembly shall not be held by hand during operation unless the system is designed to require such holding and the potential difference of the system does not exceed fifty (50) kVp. In such cases the holder shall wear protective gloves and apron of not less than 0.5 mm lead equivalency at 100 kVp.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:137. Therapeutic systems above one (1) MeV.

RELATES TO: KRS 211.842 to 211.850, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of all therapeutic x-ray and electron systems which operate at energies of one (1) MeV and above.

Section 1. Applicability. This regulation applies to all therapeutic x-ray and electron systems which operate at energies of one (1) MeV and above and to all persons, equipment and materials used in connection with the possession, use or operation of such systems.

Section 2. Leakage Radiation to the Patient Area. (1) Systems registered after March 2, 1977 [the effective date of these regulations] shall meet the following requirements:

(a) For all operating conditions producing maximum leakages the absorbed dose [equivalent] in rads [rems] due to leakage radiation (including electrons, x-rays and neutrons) at any point in a circular plane of radius two (2) meters centered on the perpendicular to the central axis of the beam at the isocenter or normal treatment distance and outside the maximum useful beam shall not exceed one-tenth (0.1) percent [(0.01 percent for neutrons)] of the maximum absorbed dose [equivalent] in rads [rems] of [in] the unattenuated useful beam measured at the point of intersection of [on] the central axis of the beam and the plane surface. Measurements, excluding those for neutrons, shall be averaged over an area up to but not exceeding 100 square centimeters at the position specified. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to but not exceeding 200 square centimeters; and

(b) The registrant shall determine or obtain from the manufacturer, for each system, the leakage radiation [(electrons, x-rays, neutrons)] existing at the points specified in paragraph (a) of this subsection for specified operating conditions. Records of radiation leakage shall be maintained at the installation.

(2) Systems registered before March 2, 1977, [the effective date of these regulations] shall meet the following requirements:

(a) For operating conditions producing maximum leakage radiation, the absorbed dose rate in rads due to [The] leakage radiation (excluding [including] neutrons) at any point on the area specified in subsection (1)(a) of this section shall not exceed one-tenth (0.1) percent of the maximum absorbed dose in rads of the unattenuated useful beam dose rate at one (1) meter from the source, for any of its operating conditions. Measurements shall be averaged over an area up to but not exceeding 100 square centimeters; and

(b) The registrant shall determine or obtain from the manufacturer for each system the leakage radiation [(electrons, x-rays, neutrons)] existing at the points specified in subsection (1)(a) of this section for the specified operating conditions. Records of radiation leakage shall be maintained at the installation.

(3) Where neutron leakage may be a hazard the cabinet may, by specific order, impose upon any user such additional requirements, as it deems appropriate or necessary to protect health and minimize danger to life or property. When imposing such additional requirements, the cabinet will give due consideration to accepted standards of safe practice.

Section 3. Leakage Radiation Outside the Patient Area. The leakage radiation outside the patient area shall meet the following requirements:

(1) The absorbed dose [equivalent] in rads [rems] due to leakage radiation, except in the area defined in Section 2(1)(a) of this regulation, when measured at one (1) meter from the path of the charged particle, before the charged particle strikes [electrons between the electron gun and] the target or window, shall not exceed one-tenth (0.1) percent for x-ray leakage, nor .05 [and 0.5] percent for neutron leakage of the maximum absorbed dose in rads [in rem, of the maximum dose equivalent on the central axis] of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the circular plane specified in Section 2(a) of this regulation [at one (1) meter from the focal spot or window]; and

(2) The registrant shall determine or obtain from the manufacturer the actual leakage radiation [(including neutrons)] existing at the points specified in Section 2(1)(a) of this regulation for specific operating conditions. Measurements, excluding neutrons, shall be averaged over an area up to but not exceeding 100 square centimeters. Neutron measurements shall be averaged over an area up to but not exceeding 200 square centimeters.

Section 4. Beam Limiting Devices. Adjustable or interchangeable beam limiting devices shall be provided such that the following requirements are met:

(1) Adjustable or interchangeable beam limiting devices shall transmit no more than two (2) percent of the useful beam at the normal treatment distance for the portion of the useful beam which is to be attenuated by the beam limiting device. Neutrons are not included in this requirement;

(2) If the beam limiting device on existing equipment does not meet the requirements of subsection (1) of this section the cabinet may accept auxiliary equipment or methods for accomplishing attenuation; and

(3) Dose equivalent measurements shall be averaged over an area up to but not exceeding 100 square centimeters at a distance of one (1) meter from the target. In case of overlapping beam limiting devices, the leakage through each set shall be measured independently.

Section 5. Filters. Filters shall be provided so that the following requirements are met:

(1) If the absorbed dose rate information provided in Section 17 of this regulation relates exclusively to operation with a field flattening or beam scattering filter in place, then the filter shall be a permanent filter only removable by the use of tools; and

(2) In therapy systems which use a system of wedge filters or interchangeable field flattening filters or beam scattering filters the following requirements shall be met:

(a) Irradiation shall not be possible until a selection of filter has been made at the control panel;

(b) An interlock system shall be provided to prevent irradiation if the filter is not in the correct position;

(c) An indication of the thin end of the wedge filter with respect to the treatment field shall be provided when wedge filters are used; and

(d) A display shall be provided at the control panel showing the filter(s) (or zero filter) in use.

Section 6. Beam Quality. The beam quality for therapy systems shall meet the following requirements:

(1) The absorbed dose, from x-ray stray radiation in the useful electron beam, on the central axis of the beam at a depth ten (10) cm further than the practical range shall not exceed the following limits:

(a) Five (5) percent of the maximum absorbed dose for electron beam energies in the range one (1) MeV thru fifteen (15) MeV;

(b) Ten (10) percent of the maximum absorbed dose for electron beam energies in the range greater than fifteen (15) MeV through thirty-five (35) MeV; and

(c) Twenty (20) percent of the maximum absorbed dose for electron beam energies in the range greater than thirty-five (35) thru fifty (50) MeV.

(2) The measurements required by subsection (1) of this section shall be made at electron beam maximum size not exceeding fifteen (15) by fifteen (15) [twenty (20) cm by twenty (20)] cm in a [water] phantom whose cross-sectional dimensions exceed the measurement radiation field by at least five (5) cm and whose depth is sufficient to perform the required measurement [of size approximately forty (40) cm by forty (40) cm by forty (40) cm]. The incident surface of the phantom shall be at the normal treatment distance and normal to the central axis of the beam [one (1) meter and normal to the central axis of the beam].

(3) At the largest field size available, the absorbed dose from electron stray radiation in the useful x-ray beam, at the surface during x-ray irradiation on the central axis of the beam shall not exceed the following limits;

(a) Eighty (80) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of one (1) thru two (2) MeV;

(b) Seventy (70) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of two (2) thru five (5) MeV;

(c) Sixty (60) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of five (5) thru fifteen (15) MeV;

(d) Fifty (50) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of fifteen (15) thru thirty-five (35) MeV; and

(e) Forty (40) percent of the maximum absorbed dose for x-ray beam maximum energies in the range of thirty-five (35) thru fifty (50) MeV.

(4) The measurements required by subsection (3) of this section shall be made using a [water] phantom of size and placement which meet the requirements of subsection (2) of this section [approximately forty (40) cm by forty (40) cm by forty (40) cm. The incident surface of the phantom shall be at one (1) meter from the target and normal to the central axis of the beam]. An instrument which will allow extrapolation to the surface absorbed dose shall be used. All beam modifying devices which are removed without the use of tools, except beam scattering or field flattening filters, shall be removed from the useful beam.

(5) The registrant shall determine, or obtain from the manufacturer, the maximum percentage absorbed dose in the useful beam [equivalent in rems] due to [stray] neutrons [radiation], excluding stray neutron [x-ray and stray electron] radiation for specified operating conditions [in subsections (1) to (4) of this section during irradiation].

Section 7. Beam Monitors. Systems registered after March 2, 1977 [the effective date of these regulations] shall be provided with two (2) radiation detectors in the radiation head. The two (2) detectors shall be incorporated into two (2) monitoring systems arranged either as a primary/primary combination or as a primary/secondary combination. Systems registered before March 2, 1977 [the effective date of these regulations] shall be provided with at least one (1) radiation detector in the radiation head. This detector shall be incorporated into a primary system. All beam monitoring systems shall meet the following requirements:

(1) Each primary system shall have a detector which is a transmission detector and is a full beam detector and is place on the patient side of any fixed added filters other than wedge filters;

(2) The detectors shall be removable only with tools or shall be interlocked to prevent incorrect positioning.

(3) Each detector shall be capable of independently monitoring and controlling the useful beam;

(4) Each detector shall form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated;

(5) For systems registered after March 2, 1977 [the effective date of these regulations] the design of the dose monitoring systems of subsection (4) of this section shall ensure that the malfunctioning of one (1) system shall not affect the correct functioning of the second system. In addition the following requirements shall be met:

(a) The failure of any element which may be common to both systems shall terminate the useful beam; and

(b) The failure of the power supply of either system shall terminate the useful beam.

(6) Each dose monitoring system shall have a legible display at the control panel. Each display shall also meet the following requirements:

(a) Maintain a reading until intentionally reset to zero;

(b) In the event of power failure, have the

capability of retrieving the information displayed at the time of the failure;

(c) On systems registered after March 2, 1977 [the effective date of these regulations] the display shall have only one (1) scale and no scale multiplying factors; and

(d) A design shall be utilized such that increasing dose is displayed by increasing numbers and shall be so designed that in the event of an overdosage of radiation the absorbed dose may be accurately determined under all normal conditions of use or foreseeable failures.

(7) Systems registered after March 2, 1977 [the effective date of these regulations] shall have an indicator on the control panel which will show when the dose on the primary monitoring system differs from the dose on the secondary monitoring system by more than ten (10) percent.

Section 8. Beam Symmetry. The useful beam shall be symmetrical within the following requirements:

(1) For systems registered after March 2, 1977 [the effective date of these regulations] each system shall have the capability of ensuring or determining that the dose rates in each of the four (4) quadrants of the useful beam are within five (5) [two (2)] percent of each other. An indication of beam symmetry shall appear at the control panel and beam assymmetry in excess of five (5) [two (2)] percent shall automatically terminate the useful beam. These requirements can be met if the registrant can demonstrate to the satisfaction of the cabinet that adequate fail-safe protection against the beam assymmetry is incorporated into the inherent design of the accelerator; and

(2) On systems registered before March 2, 1977 [the effective date of these regulations] where the cabinet has determined that beam symmetry is inadequate the use of an automatic beam assymmetry warning system shall be required.

Section 9. Selection and Display of Dose Monitor Units. Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the control panel. In addition dose monitor units shall also meet the following requirements:

(1) After the useful beam terminates it shall be necessary to reset the pre-selected dose monitor units before treatment can be re-initiated;

(2) The pre-selected number of dose monitor units shall be displayed at the control panel until reset for the next irradiation; and

(3) For systems registered after March 2, 1977 [the effective date of these regulations] the display shall have only one (1) scale and no scale multiplying factors.

Section 10. Termination of Irradiation by the Dose Monitoring System. Each of the required dose monitoring systems shall be capable of independently terminating irradiation. Dose monitoring systems shall also meet the following requirements:

(1) Provisions shall be made to test the correct operation of each system;

(2) Each primary system shall terminate irradiation when the pre-selected number of dose monitoring units has been reached, and each required secondary system shall be used as a backup; and

(3) For systems registered after March 2, 1977 [the effective date of these regulations] the beam shall terminate automatically when the secondary system detects more than ten (10) [two (2)] percent or twenty-five (25) dose monitor units above [of] the preset dose monitor units and indicators on the central panel shall show which system has terminated the beam.

Section 11. Termination Switches. It shall be possible to terminate irradiation and equipment movement or to go from an interruption condition to termination conditions at any time from the control panel.

Section 12. Interruption Switches. It shall be possible to interrupt irradiation and equipment movements at any time from the control panel. Following an interruption if shall be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a pre-selected value during interruption the system shall go to termination condition.

Section 13. Timers. A timer shall be provided, such timer shall have a display at the control panel, [be graduated in minutes and decimals of minutes,] have a pre-set [reset] time selector and have an elapsed time indicator. The timer shall be a cumulative timer which switches on and off with the irradiation and retains its reading after irradiation is interrupted or terminated. If shall be necessary to zero the elapsed time indicator and the pre-set time selector after irradiation is terminated. To guard against failure of the dose monitoring systems, the timer shall terminate irradiation when a pre-selected time has elapsed.

Section 14. Selection of Radiation Type. In systems capable of both x-ray and electron therapy the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of radiation type (x-ray or electrons) has been made at the control panel;

(2) An interlock system shall be provided to ensure that the system can emit only the radiation type which has been selected;

(3) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel;

(4) An interlock system shall be provided to prevent irradiation with x-ray when electron applicators are fitted and irradiation with electrons when x-ray wedge filters are fitted; and

(5) The radiation type shall be displayed at the control panel before and during irradiation.

Section 15. Selection of Energy. In systems capable of generating radiation beams of different energies the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of energy has been made at the control panel;

(2) An interlock system shall be provided to ensure that the system can emit only the energy of radiation which has been selected;

(3) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree

with the selected operations carried out at the control panel; [and]

(4) The energy selected shall be displayed at the control panel before and during irradiation; and [.]

(5) The nominal energy value selected shall be displayed at the control panel before and during irradiation.

Section 16. Selection of Stationary Beam Therapy or Moving Beam Therapy. In systems capable of both stationary and moving beam therapy the following requirements shall be met:

(1) Irradiation shall not be possible until a selection of stationary or moving beam therapy has been made at the control panel;

(2) An interlock system shall be provided to ensure that the system can operate only in the mode which has been selected;

(3) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel;

(4) An interlock system shall be provided to terminate irradiation if the movement stops during moving beam therapy;

(5) Moving beam therapy shall be so controlled that the required relationship between the number of dose monitor units and movement is obtained; and

(6) The mode of operation shall be displayed at the control panel.

Section 17. Absorbed Dose Rate. In systems registered after March 2, 1977 [the effective date of these regulations] a system shall be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in Section 7 of this regulation may form part of this system. In addition the following requirements shall be met:

(1) The quotient of the number of dose monitor units by time shall be displayed at the control panel; and

(2) If the system can deliver under any conditions an absorbed dose rate at the normal treatment distance more than twice the anticipated dose rate from the manufacturers estimates, a device shall be provided which terminates irradiation when the dose rate exceeds a value not more than twice the specified maximum. The value at which the irradiation will be terminated shall be a record maintained by the registrant.

Section 18. Location of Focal Spot and Beam Orientation. The registrant shall determine or obtain from the manufacturer the location with reference to an accessible point on the radiation head the following points:

(1) The x-ray target and the virtual source of x-rays;

(2) The electron window and the scattering foil; and

(3) All possible orientations of the useful beam.

Section 19. System Checking Facilities. Facilities shall be provided so that all radiation safety interlocks can be checked. When pre-selection of any of the operating conditions requires action in the treatment room and at the control panel, selection at one (1) location shall not give a display at the other location until the requisite selected operations in both locations have been completed.

Section 20. Auxiliary Support of Patients. When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used. No person other than the patient shall be in the treatment room during irradiation.

Section 21. Facility and Shielding Requirements. In addition to shielding adequate to meet the requirements of 902 KAR 100:105, the following requirements shall be met:

(1) Except for entrance doors all the required barriers shall be fixed barriers;

(2) The control panel shall be located outside the treatment room [or within a protective booth equipped with an interlocked door which is electrically connected to the control panel in such a fashion that the door must be closed during radiation production];

(3) Windows, mirror systems, closed-circuit television viewing screens or other equivalent viewing systems shall be provided to permit continuous observation of the patient during irradiation and shall be so located the operator may see the patient and the control panel from th same position. When the viewing system is by electronic means (e.g., television) an alternate viewing system shall be provided for use in the event of failure of the primary system;

(4) Provision shall be made for two-way aural communication with the patient from the control station. However, where excessive noise levels make aural communication impractical, other methods of communications shall be used;

(5) The treatment room shall be so constructed that persons may at all times be able to escape from within;

(6) Treatment rooms to which access is possible through more than one (1) entrance, shall be provided with flashing warning lights in a readily observable position near the outside of all access doors, which will indicate when the useful beam is "on." Such warning lights shall be accompanied by an appropriate sign as specified in 902 KAR 100:020, Section 12; and

(7) Interlocks shall be provided such that all entrance doors shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall be possible to restore the machine to operation only by closing the door and re-initiating exposure by manual action at the control panel.

Section 22. Protection Survey. All new facilities, and existing facilities not previously surveyed, shall have a radiation protection survey made by, or under the direction of [the cabinet or] a qualified expert. Such survey shall also be conducted after any change in the facility which might produce a radiation hazard.

(1) The registrant shall obtain a written report of the survey [person conducting the survey shall report his findings in writing to the person in charge of the facility] and a copy of the report shall be transmitted by the registrant to the cabinet.

(2) The survey and report shall indicate all instances where the facility in the opinion of

the person conducting the survey is in violation of the applicable therapy radiation regulations and shall cite the sections violated.

Section 23. Calibrations. The output of each therapeutic x-ray system shall be calibrated by[, or under the direction of the cabinet or] a qualified expert, before it is first used for medical purposed. Calibrations shall be repeated at least once every twelve (12) [six (6)] months and after any change which might significally increase radiation hazards. Calibration of the therapy beam shall be performed with a measurement instrument the calibration of which is directly traceable to national standards of exposure or absorbed dose, and which shall have been calibrated within the preceding two (2) years. Records of calibrations shall be maintained by the registrant. The calibration shall include at least the following determinations:

(1) Verification that the system is operating in compliance with the design specifications concerning the light localizer, the side light and back-pointer alignment with the isocenter, when applicable, variation in the axis of rotation for the table, gantry, and jaw system, and beam flatness and symmetry at the specific depths;

(2) The absorbed dose rate at various depths of water [exposure rate or dose rate] for the range and field sizes used and for each effective energy and for each treatment distance used for radiation therapy;

(3) The effective energy (e.g., half-value layer when appropriate) for every combination of kVp and filter used for radiation therapy;

(4) The congruence between the radiation field and the field indicated by the localizing device when localizing devices are used for radiation therapy;

(5) In uniformity of the radiation field an its dependence upon the direction of the useful beam; and

(6) The calibration determinations above shall be provided in sufficient detail such that the absorbed dose in rads to tissue adjacent to, as well as in the useful beam may be calculated to within plus or minus five (5) percent of the intended absorbed dose.

Section 24. Spot Checks. A spot check shall be made monthly [daily,] and shall include carefully selected representative or indicative measurements which will demonstrate the consistency of relevant system operating characteristics, or lack of same. Spot checks shall meet the following requirements:

(1) The spot check methods shall be in writing, shall have been designed by a qualified expert[, and shall be evaluated and approved by the cabinet].

(2) Spot checks shall include verification of continued congruency between the radiation field and the localizing device where an optical field illuminator is used;

(3) Spot checks which are erratic or inconsistent with calibration data shall be investigated promptly;

(4) For systems in which beam quality may vary significantly, spot checks shall include quality checks;

(5) Whenever a spot check indicates a significant change (as specified in the qualified experts spot check design) in the operating characteristics of a system, the system shall be recalibrated as required by Section 23 of this regulation;

(6) Where a system has a built in device which provides a self-check of any parameter during irradiation, that parameter may be spot checked weekly instead of daily; and

(7) A log for inspection by cabinet personnel shall be kept of all spot check measurements.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:140. Veterinarians.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to [directs that the Secretary of the Cabinet for Human Resources shall] provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product [conveying] radiation and the [transportation,] handling, and disposal of radioactive waste. The purpose of this regulation is to provide special requirements for the possession, use, and operation of radiographic x-ray systems for veterinary medicine purposes.

Section 1. Applicability. This regulation applies to all radiographic x-ray systems for veterinary medicine and to all persons, equipment, and materials used in connection with the possession, use or operation of such systems.

Section 2. Equipment. All veterinary radiographic x-ray systems shall meet the following requirements:
(1) The protective tube housing assembly shall be of the diagnostic type;
(2) The primary beam shall be restricted by cones, shutters, diaphragms, or adjustable collimators to an area no greater than the area of clinical interest and in no case shall the dimensions of the x-ray field exceed the dimensions of the image receptor except as follows:
(a) All dimensions of the x-ray field, measured in the plane of the image receptor, shall not exceed the corresponding dimensions of the image receptor by more than three (3) percent of the source to image receptor distance (SID) measured when the plane of the image receptor is perpendicular to the primary ray of the x-ray field; and
(b) The sum of the difference between any two (2) perpendicular dimensions of the x-ray field and the respective perpendicular dimensions of the image receptor intersecting at the center of the x-ray field shall not exceed four (4) percent of the source to image receptor distance. This paragraph shall not be construed to require enlarging the x-ray field size when the x-ray field size is less than the size of the image receptor.
(3) A means shall be provided to align the center of the x-ray field with the center of the image receptor to within two (2) percent of the source to image receptor distance;
(4) A device shall be provided to terminate the exposure after a pre-set time or exposure; and
(5) A dead-man type of exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator can conveniently stand at least one and eight-tenths (1.8) meters from the tube housing assembly, the animal, and the useful beam during all x-ray exposures provided that the exposure to the operator is within the limits provided by 902 KAR 100:020, Section 20.

Section 3. Structural Shielding. All wall, ceiling, and floor areas shall be equivalent to or provided with applicable protective barriers as required by 902 KAR 100:105, Section 2(2)(i).

Section 4. Operating Procedures. In the operation of a veterinary radiographic x-ray system the following requirements shall be met:
(1) The operator shall stand well away from the useful beam and the animal during radiographic exposures. No individual other than the operator shall be in the x-ray room while exposures are being made unless such individual's assistance is required; and
(2) When an animal must be held in position during radiography, mechanical supporting or restraining devices shall be available and used when possible. If an animal must be held by an individual, that individual shall be protected with appropriate shielding devices, such as protective gloves and apron, and shall be so positioned that no part of his body shall be struck by the useful beam. In addition the exposure of any individual used for this purpose shall be monitored and no individual shall routinely be used to hold animals.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:145. Cabinet systems.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to regulate the possession or use of any source of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this regulation is to provide requirements for the possession, use or operation of cabinet x-ray systems.

Section 1. Applicability. This regulation applies to all persons who possess, use or operate cabinet x-ray systems. This regulation does not apply to microscopic analytical x-ray systems.

Section 2. For cabinet x-ray systems installed prior to April 10, 1975, such systems shall:
(1) Have the radiation machine and all objects exposed thereto, within a permanent enclosure, within which no person is permitted to remain during the generation of x-radiation.
(2) Have adequate interlocks provided so that when any doors or panels to the enclosure are opened, the radiation-producing machine will be shut off automatically. After such shutoff, it shall be possible to restore the machine to full operation only from the control panel outside the room.
(3) If the enclosure is of such a size or is so arranged that the operator cannot readily determine whether the enclosure is unoccupied, there shall be provided:
(a) Audible or visible warning signals within the enclosure which must be activated before irradiation can be started.
(b) Suitable means of exit, so that any person who accidentally may be shut in can leave the enclosure without delay, or effective means within the enclosure for preventing or quickly interrupting the irradiation, and which cannot be reset from outside the enclosure.
(4) Except as provided in subsection (5) of this section, the exposure at any accessible region two (2) inches from the outside surface of the enclosure cannot exceed five-tenths (0.5) milliroentgen in any one (1) hour.
(5) If the registrant has submitted operating and safety procedures, and the cabinet has approved such procedures, which can show that an individual will not receive a radiation dose in excess of the limits specified in these regulations, the radiation levels specified in subsection (4) of this section may be exceeded. However, cabinet x-ray systems under this subsection shall not exceed the limits specified below:
(a) The exposure at any accessible and occupied area one (1) foot from the outside surface of the enclosure shall not exceed ten (10) milliroentgens in any one (1) hour.
(b) The exposure at any accessible and normally unoccupied area one (1) foot from the outside surface of the enclosure shall not exceed 100 milliroentgens in any one (1) hour.
(6) Operating procedures:
(a) Before a new installation is placed in routine operation, a radiation protection survey shall be made. This shall also be done after any change in an existing installation which might affect its radiation safety.
(b) A copy of each radiation protection survey shall be signed and dated by the surveyor, and kept on file by the individual in charge of the installation.
(c) The installation shall be operated in conformance with recommendations of the protection [protective] survey.
(d) The registrant shall designate a competent employee as the radiation safety officer.

Section 3. For cabinet x-ray systems installed on or after April 10, 1975, such systems shall:
(1) Have the radiation machine and all objects exposed thereto, within a permanent enclosure, within which no person is permitted to remain during the generation of x-radiation.
(2) Be so constructed that radiation emitted from the cabinet x-ray system shall not exceed an exposure of 0.5 milliroentgen in one (1) hour at any point five (5) centimeters outside the external surface.
(3) Have a permanent floor. Any support surface to which a cabinet x-ray system is permanently affixed may be deemed the floor of the system.
(4) Be so constructed that the insertion of any part of the human body through any port or [of] aperture shall not be possible.
(5) Be so constructed that each door of a cabinet x-ray system has a minimum of two (2) safety interlocks. One (1), but not both of the required interlocks, shall be such that door opening results in physical disconnection of the energy supply circuit to the high-voltage generator, and such disconnection shall not be dependent upon any moving part other than the door.
(6) Be so constructed that each access panel shall have at least one (1) safety interlock.
(7) Following interruption of x-ray generation by the functioning of any safety interlock, use of a control provided in accordance with subsection (10)(b) of this section shall be necessary for resumption of x-ray generation.
(8) Be so constructed that failure of any single component of the cabinet x-ray system shall not cause failure of more than one (1) required safety interlock.
(9) Be so constructed that a ground fault shall not result in the generation of x-rays.
(10) For all systems to which this section is applicable, there shall be provided:
(a) A key-actuated control to insure that x-ray generation is not possible with the key removed.
(b) A control or controls to initiate and terminate the generation of x-rays other than by functioning of a safety interlock of the main power control.
(c) Two (2) independent means which indicate when and only when x-rays are being generated, unless the x-ray generation period is less than one-half (1/2) second, in which case the indicators shall be activated for one-half (1/2) second, and which are discernible from any point at which initiation of x-ray generation is

possible. Failure of a single component of the cabinet x-ray system shall not cause failure of both indicators to perform their intended function. One (1), but not both, of the indicators required by this paragraph may be a milliammeter labeled to indicate x-ray tube current. All other indicators shall be legibly labeled "X-RAY ON."

(d) Additional means other than milliammeters which indicate when and only when x-rays are being generated, unless the x-ray generation period is less than one-half (1/2) second in which case the indicators shall be activated for one-half (1/2) second, to insure that at least one (1) indicator is visible from each door, access panel, and port, and is legibly labeled "X-RAY ON."

(11) For cabinet x-ray systems designed to admit humans, there shall also be provided:

(a) A control within the cabinet for preventing and terminating x-ray generation, which cannot be reset, overridden or bypassed from the outside of the cabinet.

(b) No means by which x-ray generation can be initiated from within the cabinet.

(c) Audible and visible warning signals within the cabinet which are activated for at least ten (10) seconds immediately prior to the first initiation of x-ray generation after closing any door designed to admit humans. Failure of any single component of the cabinet x-ray system shall not cause failure of both the audible and visible warning signals.

(d) A visible warning signal within the cabinet which remains actuated when and only when x-rays are being generated, unless the x-ray period is less than one-half (1/2) second in which case the indicators shall be activated for one-half (1/2) second.

(e) Signs indicating the meaning of the warning signals provided pursuant to subsection (11)(c) and (d) of this section and containing instructions for the use of the control provided pursuant to subsection (11)(a) of this section. These signs shall be legible, accessible to view, and illuminated when the main power control is in the "on" position.

(f) The designated operator(s) must have a copy of the manufacturer's operating procedures and maintenance manual for the equipment being used and must have been instructed in the proper techniques of equipment utilization.

(g) Tests for proper operation of interlock and door seal systems shall be conducted and recorded at intervals not to exceed one (1) month.

(12) Have permanently affixed or inscribed on the cabinet x-ray system at the location of any controls which can be used to initiate x-ray generation, a clearly legible and visible label bearing the statement: "CAUTION: X-RAYS PRODUCED WHEN ENERGIZED."

(13) Have permanently affixed or inscribed on the cabinet x-ray system adjacent to each port a clearly legible and visible label bearing the statement: "CAUTION: DO NOT INSERT ANY PART OF THE BODY WHEN SYSTEM IS ENERGIZED - X-RAY HAZARD."

(14) Additional requirements for x-ray baggage inspection systems. X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and at similar facilities, shall be provided with means pursuant to paragraphs (a) and (b) of this subsection, to insure operator presence at the control area in a position which permits surveillance of the ports and doors during generation of x-radiation.

(a) During an exposure or preset succession of exposures of one-half (1/2) second or greater duration, the means provided shall enable the operator to terminate the exposure or preset succession of exposures at any time.

(b) During an exposure or preset succession of exposures of less than one-half (1/2) second duration, the means provided may allow completion of the exposure in progress but shall enable the operator to prevent additional exposures.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager

(1) Type and number of entities affected:

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

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:150. Microscopic analytic x-ray.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for [regulate] the possession or use of any source of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this regulation is to provide radiation safety requirements for microscopic analytical x-ray equipment and operation.

Section 1. Applicability. The requirements in this regulation apply to the use of microscopic analytical x-ray machines. The provisions of this regulation are in addition to, and not in substitution for, other applicable provisions for these regulations.

Section 2. Equipment. (1) A label bearing essentially the words "CAUTION - RADIATION - THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED" shall be placed near any switch which energizes a tube. All labels shall use the conventional colors (magenta or purple on yellow background) and bear the conventional radiation symbol.

(2) A sign bearing the words "CAUTION - HIGH INTENSITY X-RAY BEAM" shall be placed in the area immediately adjacent to each tube housing. The sign shall be so located that it is clearly visible to any person operating, aligning or adjusting the unit or handling or changing a sample.

(3) Any apparatus utilized in beam alignment procedures shall be designed in such a way that excessive radiation will not strike the operator. Particular attention shall be given to viewing devices, in order to ascertain that lenses and other transparent components attenuate the beam to an acceptable level.

(4) Open beam configurations shall be provided with a readily discernible indication of:

(a) X-ray tube "on-off" status located near the radiation source housing, if the primary beam is controlled in this manner; and/or

(b) Shutter "open-closed" status located near each port on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so their purpose is easily identified. On equipment installed after July, 1986, warning devices shall have fail-safe characteristics. [The primary on-off switch for each tube shall include a visual indication of the tube status, in the form of a warning light on the control console and a warning light on the tube housing, wired in parallel. Such lights shall operate at all times when the tube is energized, and shall light at no other times.]

(5) A[n interlock] device which prevents entry of any portion of an individual's body [limbs, fingers, hands, wrists, etc.,] into the primary beam or causes the primary beam to be shut off, shall be provided on all open-beam configurations [utilized whenever feasible]. A registrant may apply to the cabinet for an exemption from the requirement of a safety device. Such application shall include:

(a) A description of the various safety devices that have been evaluated;

(b) The reason each evaluated device cannot be used; and

(c) A description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices. [When such a device is not feasible, alternate methods shall be provided to minimize the possibility of accidental exposure to the primary beam.]

(6) If a shutter mechanism is used to control the primary beam, a shutter status (open or closed) indication shall be provided in the area adjacent to the tube head so that the position of the shutter is readily discernible.

(7) If an interlock device turns off the x-ray beam, it shall not be possible to resume operation without resetting the beam "ON" switch at the control panel.

(8) The tube housing leakage radiation at a distance of five (5) centimeters from any accessible point on the surface of the tube housing shall not exceed two and five-tenths (2.5) [twenty-five (25)] mR per hour at each maximum specified tube rating. This measurement shall be made with a monitoring instrument appropriate for the energy range generated by the x-ray equipment, and shall be made with beam ports blocked off.

(9) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening.

(10) On open-beam configurations installed after July 1, 1986, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or a coupling has been connected to the port.

Section 3. Administrative Responsibilities. (1) An individual at each facility shall be designated to be responsible on behalf of the registrant for maintaining radiation safety. This individual, designated the [radiation protection supervisor or] radiation safety officer, shall be responsible for the following:

(a) Establishing and maintaining operation procedures so that the radiation exposure of each worker is kept as far below the maximum permissible dose as is practical;

(b) Instructing all personnel, who work with or near radiation machines, in safety practices;

(c) Maintaining a system of personnel monitoring;

(d) Arranging for establishment of radiation control areas, including placement of appropriate radiation signs and devices;

(e) Providing for radiation safety inspection of radiation machines on a routine basis;

(f) Reviewing modifications to x-ray apparatus, including x-ray tube housing, cameras, diffractometers, shielding, and safety interlocks;

(g) Investigating and reporting to proper authorities any case of excessive exposure to personnel and taking remedial action; and

(h) Being familiar with all applicable regulations for control of ionizing radiation.

(2) No individual shall be permitted to act as an operator of a particular machine until such individual has received [an acceptable amount of] training in radiation safety as it applies to that machine and is approved by the

[radiation supervisor or] radiation safety officer. The registrant shall assure that operators shall be responsible for:

(a) Keeping radiation exposure to himself and to others as low as is practical;

(b) Being familiar with safety procedures as they apply to each machine;

(c) Wearing of personnel monitoring devices, if applicable; and

(d) Notifying the radiation [protection supervisor or radiation] safety officer of known or suspected excessive radiation exposures to himself or others.

Section 4. Operating Procedures. (1) Written emergency procedures pertaining to radiation safety shall be established for each x-ray producing apparatus by the radiation safety officer [protection supervisor], and posted in a conspicuous location. These shall list the telephone number(s) of the radiation safety officer [protection supervisor] and shall include the following actions to be taken in case of a known, or suspected, accident involving radiation exposure:

(a) Notify radiation safety officer [protection supervisor]; and

(b) Arrange for medical examination. Important: Notify examining physician that exposure to low energy x-rays may have occurred.

(2) Normal operating procedures shall be written and available to all analytical x-ray equipment workers. No individual shall be permitted to operate analytical x-ray equipment in any manner other than specified in the procedures unless such individual has obtained written approval of the radiation safety officer. [Personnel shall not expose any part of their body to the primary beam.]

(3) Only properly trained maintenance personnel shall be permitted to install, repair, or make other than routine modifications to the x-ray generating apparatus and the tube housing apparatus complex.

(4) Whenever possible, x-ray diffraction and spectrographic equipment shall be placed in a room separate from other work areas.

(5) If, for any reason, it is necessary to temporarily, intentionally alter safety devices, such as bypassing interlocks or removing shielding, such action shall be:

(a) Specified in writing and posted near the x-ray tube housing so that other persons will know the existing status of the machine; and

(b) Terminated as soon as possible.

(c) When a safety device or interlock has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

(6) Unused tube head ports shall be secured in the closed position and shall be checked prior to use when the machine has been left unattended.

(7) Personnel film badges or other monitoring devices shall be worn on the finger or wrist, rather than on the body. Finger or wrist dosimetric devices shall be provided to and shall be used by:

(a) Analytical x-ray equipment workers using systems having an open-beam configuration and not equipped with a safety device; and

(b) Personnel maintaining analytical x-ray equipment if the maintenance procedures require the presence of a primary x-ray beam when any local component in the analytical x-ray system is disassembled or removed.

(c) Reported dose values shall not be used for the purpose of determining compliance with 902 KAR 100:020 unless evaluated by a qualified expert.

(8) Analytical x-ray equipment shall not be left unattended while the tube is energized unless:

(a) An interlock device is provided to prevent accidental entry into the primary beam; and

(b) The stray radiation at any accessible point at a distance of ten (10) inches from the tube housing or its containment, as measured with a monitoring instrument appropriate for the energy range generated, is no greater than two (2) mR per hour.

(9) Safety devices shall be tested at intervals not to exceed one (1) month.

(10) Records of personnel monitoring results and safety devices shall be maintained for inspection by the cabinet.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager

(1) Type and number of entities affected:

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

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:155. Particle accelerator.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of [regulate] the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide radiation safety requirements for particle accelerator operations.

Section 1. Applicability. The requirements in this regulation apply to the use of particle accelerators by persons registering such machines under the provisions of these regulations. The requirements of this regulation are in addition to, and not in substitution for, other applicable provisions of these regulations.

Section 2. Equipment. (1) A label bearing essentially the words "CAUTION - RADIATION - THIS MACHINE PRODUCES RADIATION WHEN ENERGIZED" shall be placed near any switch which energizes any portion of the machine. All labels shall use the conventional colors (magenta or purple on yellow background) and bear the conventional radiation symbol.

(2) Any apparatus utilized in beam alignment procedures shall be designed in such a way that [excessive] radiation greater than limits prescribed in 902 KAR 100:020 will not strike the operator.

(3) Any switch or device which may cause the radiation machine to produce radiation when actuated shall be located on a control panel or console, and shall cause a warning light immediately adjacent to such switch or device to light; this light shall remain lit when, and only when, the associated control circuit is energized.

(4) All locations designated as high radiation areas, and entrances to such locations shall be equipped with easily observable flashing or rotating red or magenta warning lights that operate automatically when, and only when, radiation is being produced or may be [being] produced.

(5) Each [All] entrance into a target room or other high radiation area shall be provided with a safety interlock designed to terminate radiation production for all possible modes of machine operation under conditions of barrier penetration.

(6) Only a device on the accelerator control console shall be used to turn the accelerator beam on and off. The safety interlock system shall not be used to turn off the accelerator beam, except in an emergency. If the interlock system does turn off the accelerator, it shall not be possible to resume operation without resetting the accelerator "ON" device at the control console.

(7) All safety interlocks shall not be dependent upon the operation of a single circuit; i.e., they shall be of redundant or fail-safe design. Each safety interlock shall be on a circuit which shall allow it to operate independently of all other safety interlocks.

(8) A scram button or other emergency power cut-off switch shall be located and easily identifiable in all high radiation areas. Such a cut-off switch shall include a manual reset, so that the accelerator cannot be restarted from the accelerator control console without resetting the cut-off switch.

(9) Circuit diagrams of the accelerator and the associated interlock systems shall be kept current and maintained for inspection by the cabinet and shall be available to the operator [on file at each accelerator facility].

(10) A lock shall be provided on the control panel or console.

(11) Instrumentation, readouts, and controls on the particle accelerator control console shall be clearly identified and easily discernible.

(12) All safety interlocks shall be designed so that any defect or component failure in the safety interlock system prevents operation of the accelerator.

Section 3. Administrative Responsibilities.

(1) A person at each facility shall be appointed as the [designated to be responsible for maintaining radiation safety. This person, designated the radiation protection supervisor or] radiation safety officer, and shall be delegated responsibility for ensuring [responsible for] the following:

(a) Establishing and maintaining operational procedures so that the radiation dose received by any person [exposure of each worker] is [kept] as low as reasonably achievable and [far] below the maximum permissible dose as is practical;

(b) Instructing all personnel who work with or near radiation producing machines, in radiation safety practices;

(c) Maintaining a system of personnel monitoring;

(d) Arranging for establishment of radiation control areas, including placement of appropriate radiation warning signs and devices;

(e) Providing for radiation safety inspection of radiation producing machines on a routine basis;

(f) Reviewing modifications to apparatus, shielding, and safety interlocks;

(g) Investigating and reporting to proper authorities any case of excessive exposure to personnel and taking remedial action;

(h) Being familiar with all applicable regulations for the control of ionizing radiation; and

(i) Terminating operations at the facility because of radiation safety considerations.

(j) Maintaining records of such actions to document compliance with these regulations.

(2) No individual shall be permitted to act as an operator of an accelerator until such person has:

(a) Received [an acceptable amount of] training in radiation safety and has been [as] approved by the radiation safety officer [protection supervisor]; and

(b) Demonstrated competence to use the accelerator, related equipment, and radiation survey instruments which will be employed. [;

and]

[(c) Been approved by the radiation protection supervisor.]

(3) The registrant shall ensure that each operator shall [be responsible for]:

(a) Keep[ing] radiation exposure to himself and to others as low as practical;

(b) Be[ing] familiar with safety procedures as they apply to each machine;

(c) Wear[ing of] personnel monitoring devices, if applicable; and

(d) Notify[ing] the [radiation protection supervisor or] radiation safety officer of conditions or situations which may have resulted in, or threatens to result in, unnecessary [known or suspected excessive] radiation exposure[s to himself or others].

(4) The registrant shall establish a radiation safety committee to approve in advance, proposals for uses of particle accelerators, whenever deemed necessary by the cabinet.

(5) A registrant authorized to use a particle accelerator in the healing arts shall:

(a) Appoint a medical committee of at least three (3) members to evaluate all proposals for research, diagnostic, and therapeutic use of a particle accelerator whenever deemed necessary by the cabinet. Membership of the committee should include physicians expert in internal medicine, hematology, therapeutic radiology, and a person experienced in depth dose calculations and protection against radiation;

(b) The individuals designated as users have substantial training and experience in deep therapy technique, or in the use of particle accelerators to treat humans; and

(d) Any individual designated as a user is a physician.

(6) The radiation safety committee or the radiation safety officer shall have the authority to terminate the operations at a particle accelerator facility if such action is deemed necessary to minimize danger to public health and safety or property.

Section 4. Operating Procedures. (1) Written operating procedures pertaining to radiation safety shall be established for each accelerator facility [by the radiation protection supervisor].

(2) Written emergency procedures pertaining to radiation safety shall be established [by the radiation protection supervisor,] and posted in a conspicuous location. These shall list the telephone number(s) of the radiation safety officer [protection supervisor] and shall include the following actions to be taken in case of a known, or suspected, accident involving radiation exposure:

(a) Notifying radiation safety officer [protection supervisor]; and

(b) Arrange for medical examination.

(3) The registrant shall assure that operators and other appropriate personnel are [shall be] familiar with and have been [be] given a copy of the written operating and emergency procedures pertaining to radiation safety. Each operator shall demonstrate an understanding of these procedures and the applicable requirements of 902 KAR 100:020 and 902 KAR 100:165. Such procedures shall be maintained at [posted near] the accelerator control panel [console].

(4) Particle accelerators shall be secured when not in operation to prevent unauthorized use.

(5) The registrants shall assure that personnel do [shall] not expose any part of their body to the radiation beam.

(6) If, for any reason, it is necessary to [temporarily,] intentionally alter safety devices, such as bypassing interlocks or removing shielding, such action shall be:

(a) Specified in writing and posted on the control console and at each entrance requiring a safety interlock as required by this regulation so that other persons will know the existing status of the machine; [and]

(b) Terminated as soon as possible; and [.]

(c) Authorized by the radiation safety committee and/or radiation safety officer.

(7) Accelerators shall not be left unattended while energized.

(8) Safety devices shall be tested for proper operation at intervals not to exceed three (3) [one (1)] months.

(9) Records of personnel monitoring results and safety device tests shall be maintained for inspection by the cabinet.

(10) Appropriate, portable radiation monitoring equipment shall be available at the accelerator facility, properly maintained and calibrated, and sensitive to those radiations being monitored. Such monitoring equipment shall be tested for proper operation and calibrated at intervals not to exceed one (1) year and after each servicing and repair.

(11) Radiation levels in all high radiation areas shall be continuously monitored. The monitoring devices shall be electrically independent of the accelerator control and safety interlock systems and capable of providing a readout at the control panel. All area monitors shall be calibrated at intervals not to exceed one (1) year and after each servicing and repair. [An appropriate radiation monitor shall be used within an accelerator target room and other high radiation areas. This may be:]

[(a) An area monitor with an easily observable indicator that warns of radiation levels above a predetermined limit in accessible areas; or]

[(b) A personal radiation monitor of the "chirpie" type carried into the room; or]

[(c) A portable survey instrument carried into the room.]

(12) Personal radiation dosimeters that measure the expected radiations and are of sufficient range to be useful under normal and accident conditions shall be worn by all persons designated by the radiation safety officer [protection supervisor].

(13) Before a new installation is placed in routine operation, a radiation protection survey shall be made by a qualified expert.

(14) A radiation protection survey shall be performed by a qualified expert when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas, and periodically to check for unknown changes and malfunctioning equipment.

(15) Records of all radiation protection surveys, inspections, and maintenance performed on the accelerator and related components shall be kept current and on file at each accelerator facility, and maintained for inspection by the cabinet.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985

FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:160. Plan review.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of [regulate] the possession or use of any source of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this regulation is to provide requirements for the review by the cabinet of radiation producing machine [x-ray] installation construction and modification plans.

Section 1. Applicability. This regulation applies to all persons who construct or modify radiation producing machine [x-ray] installations.

Section 2. Plan Review. Prior to construction or modification of an x-ray facility, the plans and specifications for such construction or modification shall be evaluated by a qualified expert. A report of his evaluation shall be submitted to the cabinet for review and approval. This evaluation report shall become a part of the registrant's permanent record with the cabinet. The plans shall show, as a minimum, the following:
(1) The normal location of the radiation-producing equipment's radiation port; the port's travel and traverse limits; general direction(s) of the radiation beam; locations of any windows and doors; the location of the operator's booth; and the location of the equipment's control console.
(2) Structural composition and thickness or lead equivalent of all walls, doors, partitions, floor, and ceiling of the room(s) concerned.
(3) The dimensions of the room(s) concerned. [Height, floor to floor, of the room(s) concerned.]
(4) The type of occupancy of all adjacent areas inclusive of space above and below the room(s) concerned. If there is an exterior wall, the distance to the closest area(s) where it is likely that individuals may be present [existing occupied area(s) shall be shown].
(5) The make and model of the radiation-producing equipment including the maximum energy output. [For x-ray machines, state the kilovolt peak potential; for other radiation sources, state the radionuclide, its strength in curies or the roentgens per hour at one (1) meter.]
(6) The type of examination(s) or treatment(s) which will be performed with the equipment (e.g., dental, orthodontal, chest, gastrointestinal, fluoroscopic, podiatry, fixed therapy, rotational therapy, or other).
(7) Information on the anticipated workload.

Section 3. Qualified Expert's Report. [If the services of a qualified radiation expert have been utilized,] A copy of the qualified expert's [his] report shall be submitted with the plans. This report shall show all basic assumptions (i.e., workload, occupancy and use factors, distance, etc.) used to determine the shielding requirements.

Section 4. Approval. The approval by the cabinet of such plans shall not preclude the requirement of additional modifications should a subsequent analysis of operating conditions indicate the possibility of an individual receiving a dose in excess of the limits prescribed in 902 KAR 100:020.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16,

1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:170. Proceedings.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
PURSUANT TO: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of [regulate] the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide for the conduct of proceedings before the cabinet involving the possession, use, and transfer of radioactive materials and radiation producing machines.

Section 1. Applicability. The provisions of this regulation apply to all administrative proceedings involving the use, possession, or transfer of radioactive materials or radiation producing machines within Kentucky.

Section 2. Administrative Examination of License Applications. Applications for the issuance of a license, amendment of a license at the request of the holder, transfer of a license and renewal of a license shall be reviewed by the cabinet. The applicant may be required to submit additional information and may be requested to confer informally regarding the application. The cabinet shall give to others such notice of the filing of applications as is required under the applicable provisions of these regulations and such additional notices as it deems appropriate.

Section 3. Action on License Applications, Hearings. (1) The cabinet shall, upon request of the applicant or intervenor, and may upon its own initiative, direct the holding of a formal hearing prior to taking action on the application. If no prior formal hearing has been held and no notice of proposed action has been served as provided in subsection (2) of this section, the cabinet shall direct the holding of a formal hearing upon receipt of a request therefor from the applicant or intervenor within thirty (30) days after the issuance of a license or other approval or a notice of denial.
(2) In such cases as it deems appropriate, the cabinet may cause to be served upon the applicant a notice of proposed action upon his application and shall cause copies thereof to be serviced upon intervenors or others entitled to or requesting notification. The notice shall state the terms of the proposed action. If a formal hearing has not been held prior to the issuance of the notice, the cabinet shall direct the holding of a formal hearing upon the request of the applicant or an intervenor received within fifteen (15) days following the service of the notice.

Section 4. Effect of Timely License Renewal Applications. If at least thirty (30) days prior to the expiration of an existing license authorizing any activity of a continuing nature, a licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

Section 5. Notice of Violation. (1) Prior to the institution of any proceedings for alleged violation of any provisions of these regulations, the Act, or the conditions and/or terms of a license or registration, the licensee, [or] registrant, or other person as appropriate shall be served with a written notice of violation, except as specified in subsection (2) of this section [calling the facts to his attention and requesting a written explanation or statement in reply]. The notice of violation shall state the alleged violation and will require that the licensee submit, within fifteen (15) days of the date of the receipt of the notice or other time as specified in the notice, a written explanation or statement in reply including:
(a) Corrective steps which have been taken by the licensee or registrant and the results achieved;
(b) Corrective steps which will be taken;
(c) The date when such correction and compliance will be achieved; and
(d) An admission or denial of the violation and the reason(s) for the violation(s) if admitted and required in the notice. [Within

fifteen (15) days of the receipt of such notice, or such other reasonable period as may be specified in the notice, the licensee or registrant shall send his reply to the cabinet. If the notice relates to conditions or conduct which may be susceptible of correction or to conditions or conduct which may be susceptible of correction or of being brought into full compliance by action of the licensee or registrant, he shall state in his reply the corrective steps taken or to be instituted in achieving correction and preventing further violations, and the date when such correction and full compliance will be achieved.]

(2) Where in the opinion of the cabinet the public health, interest, or safety so requires, or the violation [failure to be in compliance] is willful, the notice provided in this section may be omitted.

Section 6. Failure to Respond to Notice of Informal Hearing. (1) In the event the person to whom the notice of violation has been issued fails to respond within the prescribed time, the Secretary for Human Resources, or his designee, may set the matter down for an informal hearing as described in Section 20 of this regulation.

(2) Failure of the person to whom the notice was sent to appear at the informal hearing may result in:

(a) The registration or license of the person being modified, suspended or revoked;

(b) The recapture, quarantine or seizure of the radiation source;

(c) The inactivation of radiation producing machines; or

(d) Other appropriate action deemed necessary by the cabinet to protect public health and safety.

(3) Any person aggrieved by the action of the cabinet under this section may, within thirty (30) days after receipt of notice of such action, request a formal hearing before the secretary or his designee.

Section 7. [6.] Notices and Orders. In any case described in Section 5 of this regulation, the cabinet may issue the licensee, [or] registrant, or other person as appropriate a notice to comply with the rules and regulations of the cabinet or any order issued by the cabinet. The terms of such notice or order may be effective immediately or at a time specified in the notice or order. The notice or order shall apprise the licensee or registrant that he has the right to request a hearing within thirty (30) days by making a written request therefor to the [secretary of the] cabinet. In the event a request for a hearing is received by the [secretary of the] cabinet within the time specified, a notice of hearing shall be issued by the cabinet in accordance with Section 5 of this regulation.

Section 8. [7.] Emergency Notices and Orders. Whenever the cabinet finds that a condition [an emergency] exists requiring immediate action to protect the public health or welfare, the cabinet [it] may[, without notice or hearing,] issue a notice or an order [with the approval of the secretary of the cabinet] reciting the existence of such condition [an emergency] and requiring that such action be taken as is deemed [it deems] necessary by the cabinet to protect the public health and welfare [meet the emergency]. The notice or order may be issued by the Manager, Radiation Control, on behalf of the cabinet. Such notice or order shall be effective immediately. Any person to whom such a notice or an order is directed shall comply therewith immediately, but all applications for hearings to the cabinet shall be afforded a hearing [as soon as possible]. On the basis of such hearing, the cabinet shall continue [such order in effect], revoke [it], or modify such notice or order [it].

Section 9. [8.] Enforcement of Obedience to Orders. In case of the failure on the part of any person[, firm, or corporation] to comply with any lawful order of the [secretary of the] cabinet or with process or in case of the refusal of any witness to testify concerning any matter on which he may be lawfully interrogated, the circuit court or a judge thereof having jurisdiction may, on application of the [secretary of the] cabinet, compel obedience by proceedings as in contempt cases as provided by KRS 211.230.

Section 10. [9.] Recapture, Quarantine, or Seizure of Sources of Radiation. In cases found by the cabinet to be of extreme importance to the health and safety of the public, the cabinet may, without prior notice of hearing, recapture, quarantine, or seize any source or sources of radiation [licensed or registered sources held by the licensee or registrant], provided that as promptly as possible and not later than ten (10) days from the recapture, quarantine, or seizure, the cabinet shall serve upon the person from whom such sources were recaptured, quarantined, or seized [licensee or registrant] an appropriate order depriving that person of possession or [the licensee or registrant] use of the [licensed or registered] sources together with a notice which shall give that person [the licensee or registrant] the right to request a [formal] hearing, concerning the order depriving him of the use of the [licensed or registered] sources and the restoration of the [licensed or registered] sources to him.

Section 11. [10.] Filing Papers. Unless otherwise specified, papers required to be filed with the cabinet shall be filed with the Manager, Radiation Control [Branch], Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621. Papers required to be filed with the cabinet shall be deemed filed upon actual receipt by [with] the cabinet at the place specified accompanied by proof of service upon the parties required to be served as provided in Section 14 [13] of this regulation. Unless otherwise specified, the filing when by mail or telegram shall upon actual receipt be deemed complete as of the date of deposit in the mail or with the telegraph company. Papers may be filed in person at the cabinet's offices, 275 East Main Street, Frankfort, Kentucky 40621.

Section 12. [11.] Computation of Time. In computing any period of time prescribed or allowed by an applicable rule or regulation, notice or order, the provisions of KRS 446.030 shall apply.

Section 13. [12.] Extension of Time. (1) Extensions of time for filing or performing any act required or allowed to be done, and

continuances of any proceeding or hearing, may be granted in the discretion of the cabinet upon application and good cause shown by any party, or upon the initiative of the cabinet or stipulation of all the parties.

(2) When a hearing officer has been designated for hearing, the discretion in granting extensions of time and continuances in matters relating to the hearing shall rest with the hearing officer.

Section 14. [13.] Subpoenas, Service and Papers. Pursuant to the powers conferred by KRS 211.220, the cabinet may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet and such process shall extend to all parts of the Commonwealth. Service of process and proof of service may be made, as provided by KRS 211.220[, by registered mail or in the manner prescribed by CR 4].

Section 15. [14.] Representation. (1) Except as provided in subsection (2) of this section, any person appearing before the cabinet may do so in person or by a representative. Any person transacting business with the cabinet in a representative capacity may be required to show his authority to act in that capacity.

(2) In a formal hearing, a person may appear in person or be represented by his attorney.

Section 16. [15.] Intervention. (1) Any person whose interests may be affected by a proceeding may file a petition to intervene describing his interests, how it may be affected by cabinet action, and the position he is taking in the matter. Service of copies of the motion shall be made upon all parties to the proceeding. The licensee, applicant or registrant upon notice and motion, and other parties by leave, may contest the right of the petitioner to intervene.

(2) As soon as is practicable after filing of a motion for intervention and a hearing of argument, if any, the cabinet or a hearing officer will issue and serve an order either permitting or denying intervention. If the order is a denial of intervention, it shall contain a statement of the grounds. An order permitting intervention may be conditioned upon such terms as the cabinet or hearing officer may direct.

Section 17. [16.] Effect of Intervention of Denial Thereof. A person permitted to intervene becomes a party to the proceeding: (1) Where a notice of hearing has been issued or a hearing has begun, the admission thereafter of an intervenor shall not of itself enlarge or alter the issues without amendment as provided in subsection (3) of this section.

(2) An order denying intervention shall be without prejudice to any proposed limited appearance by the petitioner as one who is not a party for the purposes provided in Section 20 of this regulation.

(3) At any time prior to the time fixed for hearing but not later than five (5) days prior, the party concerned may amend the same by filing an amendment and serving it upon the parties. At any time thereafter, amendments may be permitted in the discretion of the hearing officer upon such terms as he shall prescribe.

Section 18. [17.] Consolidation. Upon motion and good cause shown or upon its own initiative the cabinet or hearing officer may consolidate two (2) or more proceedings.

Section 19. [18.] Authority to Administer Oaths. Any oath or affirmation required by or pursuant to the provisions of these regulations may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

Section 20. [19.] Informal Hearing Procedure. The procedure to be followed in informal hearings shall be such as shall best serve the purpose of the hearing. An informal hearing may consist of the submission of written data, views, or arguments with or without oral argument, or may partake of the nature of a conference or may assume some of the aspects of a formal hearing in which the subpoena of witnesses and the production of evidence may be permitted or directed.

Section 21. [20.] Formal Hearings. The parties to a formal hearing shall be the cabinet, the licensee, applicant or registrant as the case may be, and any person permitted to intervene.

Section 22. [21.] Limited Appearances by Persons Not Parties. With the consent of the hearing officer, limited appearances may be entered without request for or grant of permission to intervene by persons who are not parties to a hearing. With the consent of the hearing officer, and on due notice to the parties, such persons may make oral or written statements of their position on the issues involved in the proceeding, but may not otherwise participate in the hearing.

Section 23. [22.] Designation of Hearing Officer. The hearings herein provided for may be conducted by the cabinet or the secretary of the department may designate hearing officers who shall have the power and authority to conduct hearings in the name of the cabinet.

Section 24. [23.] Function of Hearing Officer. The function of the hearing officer is to schedule and conduct hearings on behalf and in the name of the cabinet on all matters referred for hearing by the cabinet. It is the duty of the hearing officer to cause to be prepared and furnished to the cabinet for decision a complete written transcript of the record of the hearing which contains all evidence introduced at the hearing and all pleas, motions, objections and rulings of the hearing officer.

Section 25. [24.] Notice of Hearing. [Whenever a hearing is granted,] The cabinet shall give timely notice of any [the] hearing to all parties and to other persons, if any, entitled to notice. Such notice shall state the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the matters of fact and law asserted or to be considered and a request for an answer. The time and place for hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives.

Section 26. [25.] Answer. (1) Within the time allowed by the notice of hearing for filing and serving an answer, the answer of a licensee,

applicant or registrant shall fully advise the cabinet and any other parties as to the nature of the defense or other position of the answering party, the issues he proposes to controvert and those he does not controvert, and whether or not he proposes to appear and present evidence. If facts are alleged, the answer shall admit or deny specifically each allegation of fact: or where knowledge is lacking, the answer may so state and the statement shall operate as a denial. Allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be controverted. The answer of an intervenor shall fully advise the cabinet and other parties of his position and whether or not he proposes to appear and present evidence.

(2) If a party does not oppose any order or proposed action of the cabinet embodied in or accompanying the notice of hearing or does not wish to appear and give evidence at the hearing, the answer shall so state. In lieu of appearing, the party may, if he chooses, submit a statement of reasons why the proposed order or sanction should not be issued or should be different than proposed, and the cabinet will attribute such weight as it deems deserving to the written reasons.

Section 27. [26.] Reply. In appropriate cases the cabinet may file and serve a reply to the answer or, if the answer affects other parties to the proceeding, the cabinet or the hearing officer may permit such parties to file and serve a reply.

Section 28. [27.] Default. Failure of a party to file and serve an answer within the time provided in the notice of hearing or as prescribed herein or to appear at a hearing, shall be deemed to authorize the cabinet in its discretion, as to such party:

(1) To find the facts alleged to be true and to enter such findings or order as may be appropriate, without further notice or hearing; or

(2) To proceed to take proof, without further notice, on the allegations or issues set forth in the specifications of issues.

Section 29. [28.] Admissions. After an answer has been filed, any party may file and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in or attached to the request or for the admission of the truth of any relevant matters of fact stated in the request. Each matter for which an admission is requested shall be deemed admitted unless within the time designated in the request, but not less than ten (10) days after service thereof or such further time as the hearing officer may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying the matters upon which the admission is requested or setting up the reasons why he cannot truthfully admit or deny such matters.

Section 30. [29.] Prehearing Conferences. (1) In order to provide opportunity for the settlement of a proceeding or any of the issues therein, or for agreement upon procedural and other matters, there may be held at any time prior to or during a hearing, upon due notice of the time and place given to all parties, such conferences of the parties as, in the discretion of the hearing officer, time, the nature of the proceeding, and the public interest may permit.

(2) Action taken at a prehearing conference may be recorded for appropriate use at the hearing in the form of a written stipulation among the parties reciting the matters upon which there has been an agreement. The stipulation shall be binding upon the parties thereto.

Section 31. [30.] Public Hearings. All formal hearings shall be public except in cases involving restricted data.

Section 32. [31.] Evidence in Formal Hearings. (1) Every party to the hearing shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. The parties shall be encouraged to present evidence in written form.

(2) The hearing officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(3) Objections to the admission or exclusion of evidence shall state the grounds of objections. The transcript shall include the objections, the grounds and the rulings, but not the argument of the grounds unless ordered by the hearing officer.

(4) Any offer of proof made in connection with an objection taken to the ruling of the hearing officer, excluding or rejecting profferred oral testimony, shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony. If the excluded material is documentary or written, a copy of such material shall be marked for identification and shall constitute the offer of proof.

(5) An official record of a governmental agency or an entry in such record, when admissible, may be evidenced by an official publication thereof or by a copy attested as a true copy by the officer having legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody.

Section 33. [32.] Briefs. Briefs may be filed within ten (10) days after the close of the hearing provided, however, that the hearing officer may upon written application grant an additional period of time not in excess of sixty (60) days within which briefs may be filed.

Section 34. [33.] Findings and Order. Whenever a hearing is granted or ordered by the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Health Services shall, after reviewing the entire record of the hearing, make his findings and enter his order. The findings and order shall be in writing and shall contain a statement of findings and conclusions upon all material issues of fact and law and shall be signed by the Commissioner for Health Services of the cabinet. The original thereof shall be filed as a part of the record of the case which shall be retained in the custody of the Commissioner for Health Services unless an appeal is taken

therefrom and one (1) certified copy of the findings and order shall be served on all parties to the proceeding.

Section 35. [34.] Appeals From Decisions of the Commissioner. Any person who is aggrieved by any ruling, decision or action of the Commissioner for Health Services may appeal to the Secretary of the Cabinet for Human Resources within thirty (30) days after service of said ruling, decision or action by filing with the secretary a written complaint setting out the ruling, decision or action complained of, the reasons that such person is aggrieved and the relief sought by such person as provided in KRS 211.260 and 211.090[(1)(b)]. A copy of such complaint shall also be served by the appealing party upon any other party in interest. No new evidence shall be introduced and the appeal shall be tried upon the record prepared by the cabinet or hearing officer. Additional briefs and oral arguments may be granted by the secretary. The secretary may affirm the findings and order of the Commissioner for Health Services, or may reverse, modify or remand the case for further proceedings. Copies of the secretary's order shall be served upon the parties in interest.

Section 36. [35.] Waiver of Procedures. The parties to any hearing may agree to waive any one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the cabinet.

Section 37. [36.] Public Records: Exceptions. Except as provided in this section all records shall be deemed public records and shall be open to inspection by the public. The following are not to be considered public records which are available for public inspection:

(1) Documents relating to personnel matters and medical and other personnel information, which, under general governmental personnel practices, are not normally made public.

(2) Intra-agency and inter-agency communications including memoranda reports, correspondence, and staff papers prepared by members of the cabinet personnel, or by any other government agency for use within the cabinet or within the executive branch of the government.

(3) Documents classified as restricted data under the Atomic Energy Act of 1954 or classified under Executive Order of the President of the United States as restricted data.

(4) Correspondence received in confidence by the cabinet relating to an alleged or possible violation of any statute, rule, regulation, order, license or permit.

(5) Any other document involving matters of internal cabinet management.

(6) Any other matter required by law to be kept confidential or not available to public inspection.

(7) Names of individuals who have received exposures to radiation.

(8) The cabinet may withhold any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. Such withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document. Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. Where the applicant is responsible for the preparation of the document. he shall insofar as is possible segregate in separate paper the information for which the special treatment is requested. The cabinet may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the persons concerned. If the request is denied, the applicant will be notified thereof with a statement of the reasons.

Section 38. [37.] Hearings: Formal and Informal. (1) Formal hearings will be held in cases of adjudication of rights.

(2) Informal hearings will normally be held for the purpose of obtaining necessary or useful information, including but not limited to cases as described in Section 6 of this regulation.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:010. Definitions.

RELATES TO: KRS 211.870, 211.890, 211.993
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, KRS 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to define terms that are applicable to all regulations adopted by the cabinet relating to operators of sources of radiation.

Section 1. Definitions. As used in the cabinet's regulations relating to the certification of operators of sources of radiation, the following terms shall have the meanings set forth below unless clearly indicated otherwise:

(1) "Certified" means the holding of a valid certificate as defined in these regulations.

[(2) "Conditional certificate" means a written authorization issued by the cabinet temporarily authorizing an individual, who has not been certified by an approved credentialing organization, to perform diagnostic radiographic procedures until July 1, 1979.]

(2) [(3)] "Contrast study" means a study performed whereby contrast media is introduced into the human body to define a part(s) which is not normally visualized on a radiograph.

(3) [(4)] "Cabinet" means the Cabinet for Human Resources.

(4) [(5)] "Emergency condition" means a condition that exists whereby an employer has unsuccessfully made a bona fide attempt to employ a certified radiation operator and the cabinet is requested to issue a provisional certificate so as not to impair necessary radiation health services to the particular facility.

(5) [(6)] "General certificate" means a written authorization issued by the cabinet authorizing an individual to perform all diagnostic radiographic procedures.

(6) [(7)] "Individual" means any human being.

(7) [(8)] "Licensed practitioner" or "licensed practitioner of the healing arts" means an individual licensed to practice medicine, osteopathy, dentistry, chiropractic, podiatry or veterinary medicine in this state.

(8) [(9)] "Limited certificate" means a written authorization issued by the cabinet authorizing an individual to perform radiographic procedures, other than those involving contrast media, in his specific field of practice or operation.

(9) [(10)] "National organization" means a professional association, approved by the cabinet, that examines, registers, certifies or approves individuals and education programs relating to operators of sources of radiation.

(10) [(11)] "Operator" or "operator of sources of radiation" means any individual, other than a licensed practitioner of the healing arts, who uses or operates a source(s) of radiation.

(11) [(12)] "Provisional certificate" means a written authorization issued by the cabinet temporarily allowing an individual to perform radiographic procedures, under the direct supervision of a licensed practitioner of the healing arts, where a certified operator is not available.

(12) [(13)] "Qualified person" means an individual who, through education and training, is qualified to teach radiation operators in one or more aspects of radiologic technology.

(13) [(14)] "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts who has the knowledge and responsibility to apply appropriate radiation practices.

(14) [(15)] "Radiography" means the use of radiation producing equipment on human beings for diagnostic radiographic purposes under the supervision of a licensed practitioner of the healing arts or a certified operator.

(15) [(16)] "Sources of radiation" means any device or equipment emitting or capable of producing ionizing radiation, when the associated high voltage is applied, for the purpose of performing human diagnostic radiographic examinations.

(16) [(17)] "Sponsoring institution" means a hospital, educational or other facility or a division thereof offering or intending to offer a course of study for operators of sources of radiation.

(17) [(18)] "Student" means an individual enrolled in a course of study for operators of sources of radiation.

(18) [(19)] Supervision:

(a) "Direct personal supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified operator.

(b) "Direct supervision" means supervised by a licensed practitioner of the healing arts or certified operator who is at all times available in the individual's place of employment or sponsoring institution.

(c) "General supervision" means supervised by a licensed practitioner of the healing arts or a certified operator who is available but not necessarily within the individual's place of employment or sponsoring institution.

(19) [(20)] "Program [Technical] director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation is properly carried out.

(20) [(21)] "Temporary certificate" means a written authorization issued by the Cabinet authorizing an individual, who has completed an appropriate course of study, to perform

radiographic procedures while awaiting examination.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:020. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

Section 1. General Applicability. The Cabinet for Human Resources' regulations relating to radiation operators require the certification of all operators of sources of radiation, other than licensed practitioners of the healing arts, for which a specific regulation has been adopted requiring certification within a particular field of practice or operation. The regulation of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste are not covered by these regulations. Nothing contained in these regulations shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to the healing arts or allied health sciences and employees of the federal government, while engaged in the performance, within this state, of their official duties.

Section 2. Application for Certification. (1) All applications for certification as an operator of sources of radiation shall be filed with the Cabinet for Human Resources, Radiation Control, 275 East Main Street, Frankfort, Kentucky 40621. All applications shall be submitted on forms provided by the cabinet.
(2) All applicants for certification shall, as a condition precedent to certification, be in compliance with the applicable regulations of the cabinet relating to their particular field of practice or operation.
(3) General and limited certificates shall expire on the last day of the month, two (2) years after the date of issuance.
(4) Temporary and provisional certificates shall expire on the last day of the month, one (1) year after the date of issuance and are not renewable.

Section 3. Examinations. (1) A general or limited certificate shall be issued upon successful passage of an appropriate examination, approved by the cabinet, in the field of practice or operation for which certification is sought. All examinations shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent is required for the passage of each respective section. An individual who fails a particular section shall be required to retake that section; provided, however, individuals who fail two (2) or more sections shall be required to retake the entire examination. An individual shall be allowed to retake the limited examination no more than three (3) times within a calendar quarter.
(2) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from a national organization acceptable to the cabinet, provided that the

holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(3) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from another state or political subdivision acceptable to the cabinet, provided that the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(4) Acceptance of an examination from a national organization shall be contingent upon the annual submission of a current examination together with an outline by subject and an item analysis of each examination section relative to individuals graduating from teaching institutions within this state. Acceptance of an examination from a state or political subdivision shall be contingent together with an outline by subject and an item analysis of each examination section. The cabinet shall hold such examination information confidential and only make its contents available to authorized representatives of the cabinet.

(5) The cabinet may accept, in lieu of the examination requirements for a general certificate, an individual's current certificate from a national organization acceptable to the cabinet that was issued prior to the effective date of these regulations.

Section 4. Fee Schedule. The following fees shall be paid in connection with the certification of operators of sources of radiation other than licensed practitioners of the healing arts:

(1) Application for Certification (non-refundable).....$15
(2) Issuance of a General or Limited Certificate..... 20
(3) Issuance of a [Conditional,] Temporary or Provisional Certificate..... 10
(4) Renewal of a General or Limited Certificate..... 20
(5) Duplicate Certificate..... 5

Section 5. Continuing Education Requirements for Renewal. (1) The continuing education requirements of this section shall be a condition precedent to the renewal of a general or limited certificate.

(2) A general certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of eighteen (18) clock hours of continuing education approved by the cabinet.

(3) A limited certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet. [A certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet. Clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.]

(4) [(3)] Certificate holders attending or participating in continuing education related to their field of practice or operation shall send documented evidence of attendance or participation to the cabinet within a reasonable time frame, not to exceed forty-five (45) days. Such evidence shall include the certificate holder's name, certificate number, subject title, date(s) attended, clock hours of instruction and the instructor's name and title.

(5) [(4)] Operators of sources of radiation may receive up to six (6) clock hours credit, on an hour-for-hour basis, toward certificate renewal for continuing education lectures if they are the instructor.

(6) Continuing education clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.

Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that all of his employees operating sources of radiation are certified as set forth in these regulations.

(2) The cabinet may[, by order,] impose upon any operator of sources of radiation or institutions teaching individuals to operate or use sources of radiation such requirements, in addition to those established in these regulations, as it deems appropriate or necessary to minimize danger to public health or safety.

(3) Only individuals holding a general certificate shall be employed as an operator of sources of radiation at facilities where contrast studies are performed.

(4) It shall be the responsibility of a certified operator to notify the cabinet within sixty (60) days regarding any change of name or address.

(5) An individual certified as an operator of sources of radiation shall [prominently] display or have available his certificate or a photocopy at his [primary] place of employment.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None

required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alterratives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:030. Teaching institution's curricula.

RELATES TO: KRS 211.870, 211.890, 211.993
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to establish uniform curricula standards for institutions teaching persons to operate sources of radiation.

Section 1. Applicability. This regulation applies to curricula standards for institutions offering an institutional course of study for operators of sources of radiation.

Section 2. Curricula Standards. All sponsoring institutions offering an institutional course of study for operators of sources of radiation shall:
(1) Make application [Apply for approval] on a form provided or approved by the cabinet;
(2) Supply all data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum instructions. Provide a structured curriculum with clearly written course descriptions, lesson plans and objectives.
(3) Have as the medical director or advisor of a course of study:
(a) For obtaining general certification, a qualified radiologist certified by the American Board of Radiology or an individual possessing suitable equivalent qualifications.
(b) For obtaining limited certification, an individual as stipulated in paragraph (a) of this subsection, or a licensed practitioner of the healing arts in the appropriate field of practice, knowledgeable in radiation protection.
(4) Provide an adequate faculty which shall be qualified through academic preparation or experience to teach the subjects assigned;
(5) Have as the program director of a course of study:
(a) For obtaining general certification, a general certified operator who must have a minimum of four (4) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice.
(b) For obtaining limited certification, a general certified operator who must have a minimum of three (3) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice. [Provide at least one (1) certified operator who shall be designated as the technical director of the training program. In addition to certification the individual must have a minimum of three (3) years of education or experience or a combination of education and experience in the appropriate field of practice;]
(6) Provide a ratio of not more than three (3) students to one (1) full-time certified operator engaged in clinical instruction;
(7) Provide a course of study in radiography at facilities approved by the cabinet;
(8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic radiographic examinations to properly conduct the course of study;
(9) Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience using phantoms and have had their performance evaluated as satisfactory by the program [technical] director;
(10) Provide direct personal supervision by a licensed practitioner of the healing arts or a certified operator to students upon their initial application of radiation to human beings;
(11) Prohibit students from being assigned night or weekend call or being placed in any other situation where they would be required to apply radiation to a human being while not under the direct supervision of a licensed practitioner of the healing arts or a certified operator [except where they have completed at least fifty (50) percent of their course of study and had their performance evaluated and recorded as satisfactory by the technical director permitting radiographic procedures under general supervision].
(12) Students performing the functions of a certified radiation operator outside the academic setting, must have completed at least fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director. Students must be under the direct supervision of a licensed practitioner of the healing arts or a certified radiation operator. It shall be the responsibility of the teaching institution to insure that the conditions under which students are performing the functions of a radiation operator are compatible with the educational institution's clinical affiliation standards.
(13) [(12)] Prohibit all exposures to human

beings from a source of radiation except for diagnostic purposes unless otherwise specified in the curriculum approved by the cabinet;

(14) [(13)] Keep records of each student's attendance, grades, clinical experience, and subjects completed;

(15) [(14)] Designate a radiation safety officer; and

(16) [(15)] Permit site inspections by representatives of the cabinet. The cabinet may accept, in lieu of a departmental site inspection, a site visit report from a recognized accrediting body.

Section 3. Advanced Placement. Upon departmental approval, advanced placement may be made by examination in accordance with institutional policy based upon the same standards of achievement required for students completing the required clock hours of classroom and clinical experience. Examinations used in advance placement shall be reliable, valid and standardized and based on performance data of students who have completed the required subjects.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:040. Medical, osteopathic or chiropractic supervision.

RELATES TO: KRS 211.870, 211.890, 211.993
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to establish uniform standards for the certification of individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a medical, osteopathic or chiropractic licensed practitioner of the healing arts.

Section 1. Applicability. This regulation applies to individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a medical, osteopathic or chiropractic licensed practitioner.

Section 2. General Certification Required to Perform Contrast Studies. Only individuals holding a general certificate shall operate sources of radiation at facilities where contrast studies are performed.

Section 3. Eligibility for a General Certificate. No person shall be eligible for a general certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a medical, osteopathic or chiropractic licensed practitioner unless he has:
(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and
(2) Satisfactorily completed a twenty-four (24) months' course of study in medical, osteopathic or chiropractic radiography approved by the cabinet. The course shall include a minimum of 410 hours of classroom work including the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique and ethics; and shall include an adequate number

of hours but not less than 2,200 hours to be devoted to clinical experience consisting of demonstrations, discussions, seminars and supervised practice; and

(3) Satisfactorily passed an examination conducted or approved by the cabinet.

Section 4. Eligibility for a Limited Certificate. No person shall be eligible for a limited certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a medical or osteopathic or chiropractic licensed practitioner unless he has:

(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and

(2) Satisfactorily completed a limited course of study in medical, osteopathic, or chiropractic radiography approved by the cabinet through an institutional or independent study course.

(a) The approved institution course of study shall include not less than 140 hours of classroom work including the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique and ethics; and shall include an adequate number of hours but not less than 260 to be devoted to clinical experience consisting of demonstrations, discussions, seminars and supervised practice; or

(b) The approved independent study course shall include but not be limited to the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique and ethics. Clinical experience can be obtained by performing a minimum of fifty (50) radiographic examinations in each of the following areas: chest, extremeties and musculoskeletal. Such experience shall be obtained at the individual's place of employment, an alternate facility, or a combination of the two (2). The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator; and

(3) Satisfactorily passed an examination conducted or approved by the cabinet.

[Section 5. Conditional Certificate. Individuals who have not been certified by an approved credentialing organization shall be issued a conditional certificate. All conditional certificates shall expire effective July 1, 1979 and are non-renewable. Upon successful passage of an appropriate departmental examination, the holder of a conditional certificate shall be issued a general or limited certificate pursuant to these regulations.]

Section 5. [6.] Temporary Certificate. The cabinet may, upon proper application and upon payment of the appropriate application and certificate fee, issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in medical, osteopathic or chiropractic radiography and who meets all the other requirements of these regulations other than having taken the required examination.

Section 6. [7.] Provisional Certificate. The cabinet may, under emergency conditions only, issue a provisional certificate to an applicant who works under the direct supervision of a medical, osteopathic or chiropractic licensed practitioner provided:

(1) No certified operator is available;

(2) The licensed practitioner accepts full responsibility for such applicant;

(3) The applicant has successfully completed a four (4) year course of study in a secondary school or passed a standard equivalency test;

(4) The applicant and the licensed practitioner file a joint statement detailing the training and experience of the applicant, if any, and give an assurance that a minimum of thirty (30) clock hours of training will be forthcoming under the direct supervision of a licensed practitioner or other qualified person, as defined in 902 KAR 105:010, Section 1(12) [(13)].

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: December 11, 1985

FILED WITH LRC: January 9, 1986 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager

(1) Type and number of entities affected:

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

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:060. Podiatrist supervision.

RELATES TO: KRS 211.870, 211.890, 211.993
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to establish uniform standards for the certification of individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a podiatrist.

Section 1. Applicability. This regulation applies to individuals who operate sources of radiation for human diagnostic radiographic purposes while under the supervision of a podiatrist.

Section 2. Eligibility for a Limited Certificate. No person shall be eligible for a limited certificate as an operator of a source of radiation for human diagnostic radiographic purposes under the supervision of a podiatrist unless he has:
(1) Satisfactorily completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and
(2) Satisfactorily completed a limited course of study in podiatry radiography approved by the cabinet through either: an institutional study course; or an independent study course:
(a) The approved institutional course of study shall include not less than sixty-five (65) hours of classroom work including the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques; anatomy and physiology, radiation protection, patient positioning, film critique and ethics; and shall include an adequate number of hours but not less than ten (10) to be devoted to clinical experience consisting of demonstrations, discussions, seminars, and supervised practice; or
(b) The approved independent study course shall include but not be limited to the following subjects: x-ray physics, radiographic techniques, darkroom chemistry and techniques, anatomy and physiology, radiation protection, patient positioning, film critique and ethics. Clinical experience shall be obtained by performing a minimum of fifty (50) radiographic examinations of the foot <u>and its related or governing structures</u>. Such experience shall be obtained at the individuals's place of employment, an alternate facility, or a combination of the two (2). The employer shall be responsible for providing or arranging for the required clinical experience <u>and providing appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator</u>; and
(3) Satisfactorily passed an examination conducted or approved by the cabinet.

[Section 3. Conditional Certificate. Individuals who have not been certified by an approved credentialing organization shall be issued a conditional certificate. All conditional certificates shall expire effective July 1, 1979, and are non-renewable. Upon successful passage of an appropriate departmental examination, the holder of a conditional certificate shall be issued a general or limited certificate pursuant to these regulations.]

Section <u>3.</u> [4.] Temporary Certificate. The cabinet may, upon proper application and upon payment of the appropriate application and certificate fee, issue a temporary certificate to an applicant who has successfully completed an approved course of instruction in podiatric radiography and who meets all of the other requirements of these regulations other than having taken the required examination.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate methoc 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: 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 radiation regulations.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990
PURSUANT TO: KRS 13A.100, 194.050(1), 341.115
NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:
(1) Unemployment Insurance Local Office Manual as issued February, 1984 and last revised December 16, 1985 [November 15, 1985]. This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting the eligibity review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-servicemembers, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.
(2) Unemployment Insurance Benefit Branch Procedures Manual issued May, 1982 and last revised October 15, 1985. This manual includes procedures for administering the payment of unemployment insurance benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-servicemembers, combined wage claimants, interstate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive Program; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.
(3) Unemployment Insurance Tax Collection and Accounting Branch Manual issued November, 1982 and last revised August 1, 1985. This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wages and tax reports by making adjustments, assessing additional payment and penalties and crediting tax overpayments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bankruptcy or against monies due to delinquent employers from state agencies.
(4) Unemployment Insurance Administrative Support Branch Manual issued December, 1983 and last revised November 9, 1984. This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control; and for monitoring purchases, expenditures and repairs.

(5) Unemployment Insurance Field Audit Manual issued February, 1984 and last revised January 11, 1985. This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical assistance to employers.

(6) Unemployment Insurance Director's Office Manual issued November 18, 1983, and last revised December 12, 1984. This manual includes procedures for operating the Fraud Investigations and Internal Security Unit such as procedures for: administering the unit; detecting fraud; prosecuting fraud cases; closing out fraud cases; preventing fraud; maintaining internal security; and conducting other investigations.

(7) Kentucky Unemployment Insurance Commission Administrative Branch Manual issued September 1, 1985. This manual includes procedures for the daily operations of the branch. Such procedures include staff duties and responsibilities, the review of cases, the conduct of hearings, the preparation of decisions and the proper handling of records and reports.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 and in local unemployment insurance offices located throughout the state.

Section 3. Summary of Amendment. Unemployment Insurance Local Office Manual. (1) Chapter 6000 [1000], Claims Investigation [Introduction], strike contents page including 6129-6310 dated 11-15-85 [date 3-29-85], and substitute in lieu thereof new contents page including 6129-6310 dated 12-16-85 [dated 10-30-85]. Strike pages (6224-6254) - (6254-6258) dated 9-16-85, and substitute in lieu thereof pages (6224-6236) - (6254-6258) dated 12-16-85, which adds the subheading "State Income Tax Refund Intercept" and describes the Appeals and Benefit Branch procedures as they relate to intercepting State Income Tax Refunds. Strike contents page dated 9-16-85, (section 6000 through 6127) and substitute in lieu thereof contents page dated 12-11-85, (sections 6000 through 6127). Strike pages (6000-6010) - (6017-6017) dated 9-16-85, and substitute in lieu thereof pages (6000-6010) - (6017-6019) dated 12-11-85, which adds a section regarding eligibility for benefits and disqualification of employees of educational institutions or educational service agencies between school terms and during vacation and holiday recesses. Strike pages (6190-6190) - (6190-6193) dated 9-16-85, and substitute in lieu thereof pages (6190-6190) - (6190-6193) dated 11-22-85, which provides instructions for entering weeks claimed on program 4B when an invalid claim becomes valid after reconsideration but the claimant is other wise disqualified.

(2) Chapter 12000 [2000], Personnel Time Distribution Section [Initial Claims], strike entire chapter, [contents page dated 8-30-85,] and substitute in lieu thereof entire chapter dated 11-15-85, which revises the chapter's format to the standardized Department for Employment Services manual format [new contents page dated 10-30-85].

(3) Chapter 14000 [3000], Charts and Form Letters [Continued Claims], strike entire chapter [contents page dated 6-13-85], and substitute in lieu thereof entire chapter dated 11-15-85, which revises the chapter's format to the standardized Department for Employment Services Manual format. [new contents page dated 10-30-85. Strike entire chapter and substitute in lieu thereof new chapter dated 10-30-85, which corrects heading from Part IV to Part I.]

(4) Chapter 15000 [4000], Local Office Ranking [Video Operations], strike entire chapter [contents page dated 10-18-85], and substitute in lieu thereof entire chapter dated 11-15-85, which revises the chapter's format to the standardized Department for Employment Services Manual format [contents page dated 10-30-85].

[(5) Chapter 6000, Calims Investigation, strike page (6106-6106(3)) - (6127-6131) dated 9-16-85, and substitute in lieu thereof page (6106-6106(3)) - (6127-6131) dated 10-31-85, which provides for clarification when multiple decisions are issued. Strike contents page (sections 6130 through 6310) dated 9-16-85, and insert in lieu thereof contents page (sections 6129 through 6310) dated 11-15-85. Strike pages (6125-6127) - (6127-6131) dated 10-31-85, and insert in lieu thereof pages (6125-6127) - (6130-6131) dated 11-15-85, which provides for referrals to the Quality Control Section, a mandatory federal program devised to insure unemployment insurance payments are in compliance with law.]

[(6) Chapter 8000, Appeals, strike entire chapter and insert in lieu thereof new chapter dated 10-30-85, which revises the chapter's format to the standardized Department for Employment Services Manual format.]

[(7) Chapter 9000, Extended Benefits, strike entire chapter and insert in lieu thereof new chapter dated 10-30-85, which removes FSC procedures and revises the chapter's format to the standardized Department for Employment Services Manual format.]

[(8) Chapter 13000, Statistical Reports, strike entire chapter and insert in lieu thereof new chapter dated 11-14-85, which revises the chapter's format to the standardized Department for Employment Services Manual format and which revises the procedures for the completion of forms.]

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986, at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by February 16, 1986, of their desire to appear and testify at the hearing: R. Hughes Walker, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Daniels
(1) Type and number of entities affected: U.I. claimants; thousands per year.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All claimants treated equally.

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

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:
(1) The upper limit for resources [is $1,600] for family size of one (1) and [, $3,200] for family size of two (2) is set at $1,700 and $3,400 respectively, effective January 1, 1986; at $1,800 and $3,600 respectively, effective January 1, 1987; at $1,900 and $3,800 respectively, effective January 1, 1988; and at $2,000 and $4,000 respectively, effective January 1, 1989, with [, and] fifty (50) dollars for each additional member.
(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.
(3) Equity of $6,000 in income-producing, non-homestead real property, business or non-business, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or non-income producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.
(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.
(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s), (prepaid burials or similar arrangements, trust fund(s), life insurance policies, or other separate and identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to un-commingle the burial reserve amount.
(6) Burial spaces, plots, or vaults are excluded from consideration as a countable resource without regard to value.
(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.
(8) The following exclusions are also applicable as stated:
(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.
(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.
(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.
(d) Disaster relief assistance is excluded from consideration.
(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

Section 2. Income and Resource Exemptions.

Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,300	$192
2	2,700	225
3	3,200	267
4	3,900	325
5	4,600	383
6	5,200	433

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

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

(1) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

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

(a) Available income in excess of twenty-five (25) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-Down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Stepparents are responsible for their stepchildren as shown in Section 10(7) and Section 11 of this regulation. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation and the six (6) months following that month.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(5) For an individual whose case is being worked as if he/she were a single individual due to living apart from his/her spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his/her spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or non-spouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18) living with his/her parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parents' for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his/her income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five (25) dollars maintenance standard is not applicable since his/her needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (hereinafter referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case [on the basis of incapacity,] the stepparent's or grandparent's gross income is considered available to the spouse or minor parent in accordance with the policies set forth in this section. [parent (but not the other members of the assistance group) subject to the following exclusions/disregards:]

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or [the first forty (40) dollars of the gross earned income of the stepparent who is employed] part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) [(2)] An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals living

in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his/her federal personal income tax liability.

(c) [(3)] Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(d) [(4)] Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) [(5)] Income of a stepparent or grandparent receiving Supplemental Security Income.

(f) [(6)] Verified medical expenses for the stepparent or grandparent and his/her dependents in the home.

(2) Determining eligibility of the children. When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, such income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration.

(a) The available income deemed to the spouse or minor parent shall be the lesser of the amount available or the medically needy income level for one (1), as shown in Section 3 of this regulation.

(b) The income of the spouse or minor parent (including the amount deemed) shall be combined with that of the child(ren) and the total compared against the medically needy income level for the appropriate family size. If there is no excess income, the child is eligible. If there is an excess, the excess amount may be spent down in the usual manner.

(3) Determining eligibility of the spouse or minor parent. Available income of the stepparent or grandparent remaining after exclusions/disregards are applied must be considered fully available to the spouse or minor parent. The eligiblity of the spouse or minor parent is therefore determined in the same manner as shown in subsection (2) of this section, except that the full amount available (including that portion of the available income, if any, which is in excess of the medically needy income level for one (1)) is deemed to the spouse or minor parent.

(4) When the spouse or minor parent, or both the spouse or minor parent and child(ren) has a spend-down case(s), uncovered incurred medical expenses of all members of the budget unit may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself/herself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-Sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. [considered available in the month of receipt or the first administratively feasible month thereafter.]

Section 14. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the cabinet will consider the

excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

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

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

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

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

Section 15. Special Provisions for AIS/MR Recipients. Effective April 1, 1983, medical assistance eligibilty for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

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

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

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

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

Section 16. Implementation. The provisions of this regulation, as amended, will be effective on April 1, 1986 [July 1, 1985], applicable at the time of the next determination of eligibility for each applicant or recipient, except as otherwise specified herein.

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: January 2, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: An estimated 100 AFDC related 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:

1. First year: $80,000 (savings)

2. Continuing costs or savings: $80,000 (savings)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Assumes that approximately 100 AFDC related recipients will be discontinued as a result of deemed income.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

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

904 KAR 1:011. Technical eligibility requirements.

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[(3)] empowers the cabinet by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth

the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his/her first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy. For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. To qualify for continuing eligibility in this situation, the family must have received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The nine (9) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the nine (9) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection by the cabinet of child or spousal support, and who received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. Effective April 1, 1986, for new approvals and at time of reinvestigation for other cases, the family unit must be determined in the same manner as is required for AFDC cases, except that if a family member(s) is pregnant the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living

is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than three (3) months in any twelve (12) month period.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 6. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 8. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 26, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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 AFDC related MA only cases are potentially 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:

*Assumes that restructuring the budgetary unit will have approximately equal negative and positive effects, and that the net result will be no budgetary change.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

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

904 KAR 1:013. Payments for acute care and mental hospital inpatient services.

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

Section 1. Acute Care Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised <u>January 1, 1986</u> [August 3, 1985], which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be re-established and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Peer grouping. Acute care hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up <u>unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in the same manner with regard to the upper limit to recognize the presence of the major pediatric teaching component existing outside the state university hospitals</u>). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only.

(5) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to <u>operating and</u> capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. <u>Operating costs are all costs except professional (physician) and capital costs.</u> Capital costs are interest and depreciation related to plant and equipment. <u>The minimum occupancy factor is not applicable with regard to operating costs of mental hospitals.</u>

<u>(6) Use of a reduced depreciation allowance. The allowable amount for depreciation on</u>

building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(7) [(6)] Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays and/or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served) and the upper limit is established at 105 percent for those mental hospitals serving a disproportionate number of poor patients (defined as thirty-five (35) percent or more Medicaid clients as compared to the total number of clients served). For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up).

(8) [(7)] Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(9) [(8)] Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(10) [(9)] Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-State Hospitals. Participating out-of-state hospitals, except those where the other state's Medicaid Program pays on the basis of diagnosis related groupings, shall be reimbursed for covered services rendered eligible Kentucky Medicaid recipients at the lower of the rate paid by the other state's Medicaid Program or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size (or total array, in the instance of mental hospitals), except that payments shall not exceed charges. For those participating out-of-state hospitals where the other state's Medicaid Program pays on the basis of diagnosis related groupings, reimbursement for covered services rendered eligible Kentucky Medicaid recipients shall be at the lower of eight (80) percent of the hospital's covered charges or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size. The operating cost upper limits shall be appropriately adjusted to include capital costs. The appropriate amount to include for capital costs shall be the average allowable per diem capital cost for the peer group (not adjusted for occupancy). Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 30, 1985
FILED WITH LRC: December 30, 1985 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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 acute care hospitals.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $14,000,000 to $17,000,000 (savings)*.
2. Continuing costs or savings: $14,000,000 to $17,000,000 (savings)*.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
*Assumes depreciation may be split approximately equally between building & fixtures and major movable equipment.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

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

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:011 and 904 KAR 1:004 (except as otherwise specified herein) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) The upper limit for resources <u>for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively, effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989</u> [is $1,500 for an individual and $2,250 for a couple].

(2) Income producing property with a net equity of $6,000 or less is excluded.

(3) The first $4,500 of equity value in an automobile is excluded; if used for employment, to obtain medical services, or if specially equipped (e.g., as for use by the handicapped) there is no upper limit on value.

(4) Burial reserves (life insurance, prepaid burial policy, etc.) up to $1,500 are excluded. The face value of life insurance is considered when determining the total value of burial reserves if the face value of the life insurance is less than $1,500. Burial spaces are excluded from consideration when computing the value of burial reserves.

(5) A homestead, household items, and personal items are excluded.

(6) Resources determined in accordance with subsections (2), (3), and (4) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than $498 [$466], effective 1/1/86 [7/1/83; not less than $476, effective 1/1/84];

(b) Family care home: not less than $411 [$379], effective 1/1/86 [7/1/83; not less than $389, effective 1/1/84];

(c) Caretaker:

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $365 [$333], effective 1/1/86 [7/1/83; not less than $343, effective 1/1/84];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $528 [$480], effective 1/1/86 [7/1/83; not less than $496, effective 1/1/84];

3. Married couple, both eligible and both requiring care: not less than $566 [$518], effective 1/1/86 [7/1/83; not less than $534, effective 1/1/84].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

Section 6. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 7. Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as otherwise specified herein.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His/her I.Q. is forty-nine (49) or less or he/she has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He/she is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he/she is incapable of indicating intent.

(4) An individual is institutionalized if he/she is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his/her state of residence is Kentucky if he/she is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his/her state of residence is Kentucky if he/she is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his/her legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he/she was living in Kentucky when he/she became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he/she was living in another state when he/she was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals

(i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he/she continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he/she does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his/her receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he/she returns to this state and he/she has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he/she leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

[Section 8. Implementation. The provisions of this regulation, as amended, will be effective on August 1, 1984, applicable at the time of the next reinvestigation for each recipient, except as otherwise specified.]

MIKE ROBINSON, Deputy Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: January 2, 1986
FILED WITH LRC: January 9, 1986 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: Applicants/recipients of state supplementation payments.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $220,000-$235,000 (costs)*

2. Continuing costs or savings: $220,000-$235,000 (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 approximately 10 to 20 additional eligible recipients and pass-through of SSI cost of living increase to the non-SSI eligible state supplementation recipients.

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

PROPOSED REGULATIONS RECEIVED THROUGH JANUARY 15, 1986

FINANCE AND ADMINISTRATION CABINET
Kentucky Higher Education Assistance Authority

11 KAR 3:050. Student eligibility.

RELATES TO: KRS 164.740(8), 164.744(1), 164.748(1),(3),(4)

PURSUANT TO: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: This regulation sets forth the eligibility prerequisites for students to receive KHEAA insured student loans under the Guaranteed Student Loan Program. The regulation further sets forth the annual limitations on loan amounts.

Section 1. Eligibility Requirements. To be eligible to receive a KHEAA insured student loan under the Guaranteed Student Loan Program, an applicant must:

(1)(a) Be a citizen, national, or permanent

resident of the United States; or

(b) Be in the United States for other than a temporary purpose and provide evidence from the United States Immigration and Naturalization Service of his/her intent to become a permanent resident; or

(c) Be a permanent resident of the Trust Territories of the Pacific or Northern Mariana Islands; or

(d) Be a national of the United States enrolled or accepted for enrollment in a participating educational institution located outside of the United States;

(2) Be a resident of Kentucky enrolled or accepted for enrollment at any participating educational institution, or a non-resident of Kentucky enrolled or accepted for enrollment at a participating educational institution located in Kentucky; and

(3) Be enrolled or accepted for enrollment at a participating educational institution on at least a half-time basis in an eligible program (qualifying the institution as an eligible institution), and if currently enrolled, must be in good standing and making satisfactory progress according to standards established by the institution; and

(4) Be maintaining at least a "C" average or its equivalent grade point standing during undergraduate school; and

(5) Not be enrolled or planning to enroll in a program of study leading to a certificate, diploma, or degree in theology, divinity or religious education; and

(6) Have demonstrated ability to benefit from the training offered, as required by federal regulations (34 CFR Part 682), if enrolled or accepted for enrollment at an institution defined as "vocational school" under said federal regulations; and

(7) Be attending neither elementary nor secondary school; and

(8) If enrolled or accepted for enrollment in a flight school program:

(a) Plan to pursue to be pursuing a full-time program leading to commercial flight ratings;

(b) Have completed ground school training or be taking it concurrently with flight training; and

(c) Hold a private pilot's certificate or have sufficient flight hours to qualify for such certificate.

(9) Be determined by the educational institution to be eligible for federal interest benefits; and

(10) Be determined by the educational institution and the assistance authority not to be in default on GSLP, PLUS, National Defense or Direct Student Loan, unless such loan has been paid in full or the loan has been paid up to date in accordance with its original repayment terms and terms for repayment have been approved by the holder of the loan; and

(11) Be determined by the educational institution not to owe a refund on a Pell Grant, a Supplemental Educational Opportunity Grant, or a State Student Incentive Grant, unless satisfactory arrangements have been made to repay or adjust the award.

Section 2. Student Eligibility Exceptions. In some instances, exceptions may occur when determining the student's eligibility for receiving KHEAA-GSLP. These exceptions are:

(1) If the student is overpaid on a Pell Grant, the student may be eligible if the student is otherwise eligible, and the overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent grant payments for that award period. If the student is overpaid as a result of an educational institution error, and the overpayment cannot be eliminated by adjusting subsequent payments, the student may be considered eligible if the student is otherwise eligible and the student acknowledges, in writing, the amount of the grant overpayment and agrees to repay it in a reasonable period of time.

(2) If the student has experienced extenuating circumstances resulting in a low grade point average. KHEAA may override the low grade point average if any of these conditions occur:

(a) The student has transferred to another institution and has lost a number of credit hours (or quality points) which reduces his or her overall grade point average; or

(b) The student's low grade point average was for an academic period of more than one (1) year in the past; or

(c) The student experienced illness or suffered some personal hardship during the academic period for which a low grade point average was recorded. KHEAA reserves the right to determine the override possibilities of a grade point average that does not meet insurance eligibility. Where necessary, KHEAA may require supporting documentation or physician statements detailing the illness and the period of treatment.

Section 3. Loan Maximums. (1) The maximum loan which shall be insured by KHEAA under the guaranteed student loan shall be that amount authorized by the Higher Education Act of 1965, as amended (20 U.S.C. 1071 et seq.) and implementing regulations (34 CFR Part 682).

(2) Unless otherwise provided pursuant to subsection (1) of this section, a KHEAA insured loan shall not exceed the borrower's estimated cost of education less the estimated amount of other financial aid to be received and the amount of expected family contribution, if any, as determined in accordance with applicable federal law and regulations. Subject to this limitation, an undergraduate student may borrow up to $2,500 (less any loan received by an independent undergraduate under the PLUS Loan Program), and graduate students may borrow up to $5,000, per academic period set forth in subsection (3) of this section.

(3) The loan maximums set forth in subsection (2) of this section shall apply to an academic year which corresponds to July 1 of one (1) calendar year through June 30 of the succeeding calendar year, except where:

(a) The borrower has advanced in academic level (for instance from freshman to sophomore) during such year; or

(b) Nine (9) months have elapsed from the beginning date of the loan period specified on a preceding loan application.

(4) The maximum loan amount insured for a state or school lender is the lessor of $2,500 or fifty (50) percent of the estimated cost of education for a student who is enrolled in the first year of postsecondary education and was not previously enrolled in such a program. Loans made or originated by a school lender to such students may not exceed $1,500 for an academic

year, unless it is to be disbursed in two (2) or more installments.

Section 4. Aggregate Loan Limits. The aggregate amount that a borrower may receive under the Guaranteed Student Loan Program during undergraduate studies is $12,500 (including amounts received by an independent undergraduate student under the PLUS Loan Program). The aggregate amount that a borrower may receive for both undergraduate and graduate studies is $25,000.

PAUL P. BORDEN, Executive Director
APPROVED BY AGENCY: December 2, 1985
FILED WITH LRC: December 13, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing regarding this regulation is scheduled to be held at 1050 U.S. 127 South, Frankfort, Kentucky, on Thursday, February 27, 1986, at 10 a.m. Any interested persons wishing to comment or attend the hearing pursuant to KRS Chapter 13A must submit their written comments or statement of intent to attend to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, no later than Saturday, February 22, 1986. Absent such response from the public, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden
(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: 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: Regulation sets forth student eligibility criteria. No alternatives are practical.
(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 sets forth requirements for eligibility of students under the Guaranteed Student Loan Program. The regulation reiterates requirements already existing and published in the KHEAA Guaranteed Student Loan Manual, except that the period for which loan maximums are assessed has been shortened pursuant to Section 3(3)(b) of the regulation.

Tiering:
Was tiering applied? No. Regulation sets forth student eligibility requirements for guaranteed student loans. These requirements must be uniform in accordance with federal law.

FINANCE AND ADMINISTRATION CABINET
Kentucky Higher Education Assistance Authority

11 KAR 7:010. Incentive loan program; mathematics and science.

RELATES TO: KRS 156.611
PURSUANT TO: KRS 156.611(10), 164.748(4)
NECESSITY AND FUNCTION: KRS 156.611 sets up an incentive loan program for awarding incentive loans to persons declaring an intention to serve and who actually render service in the critical teacher shortage fields of mathematics and science. Section 39 of House Bill 6, enacted in the 1985 extraordinary session of the General Assembly, amended KRS 156.611 to transfer administration of this program from the Department of Education to the Kentucky Higher Education Assistance Authority. It is necessary to the uninterrupted administration of the program that the Assistance Authority promulgate this regulation, as an interim measure, to prescribe rules for the administration of the program while the Assistance Authority conducts extensive program planning, evaluation and development of a permanent administrative structure for the program. For this reason, this regulation closely corresponds to 704 KAR 15:090 promulgated by the Department of Education.

Section 1. (1) Up to thirty (30) percent of the annual appropriation for KRS 156.611 will be used to assist certified teachers who do not possess certification in one of the fields set forth in KRS 156.611 and who have been admitted to an appropriate teacher education program either as a part-time student during the regular school term or as a summer school student, and who plan to complete requirements for certification in the specified critical shortage field.
(2) Eligible applicants for such loans must already possess a Kentucky teacher certificate.
(3) For first time applicants priority for such loans will be given to the rank order established on the basis of the following appropriately weighted criteria.
(a) The higher of either the applicant's grade point average for undergraduate work, or NTE/GRE scores. Weight: fifty (50) out of a maximum of 100.
(b) Consideration to teachers teaching out of field in one of the fields identified in KRS 156.011 on or before December 1, 1984. Weight: fifteen (15) out of a maximum of 100.
(c) Consideration to teachers from minority population groups. Weight: fifteen (15) out of a maximum of 100.
(d) Proximity to completion of certification requirements in one of the identified fields. Weight: ten (10) out of a maximum of 100.
(e) Need for teachers in chosen field as determined by the Department of Education. Weight: ten (10) out of a maximum of 100.
(4) Once all the criteria in subsection (3) of this section have been evaluated and two (2) or more applicants appear equally qualified, selection between the applicants will be made on the basis of accompanying letters of recommendation from persons associated

professionally with the applicant.

(5) Applications for such loans by eligible teachers will be received and verified each semester by the institution where the teacher intends to enroll. The institutions shall forward the applications and supporting documentation of the eligible applicants to the Department of Education.

(6) Applicants who have successfully completed one (1) or more semesters in the program, maintain a two and five-tenths (2.5) grade point average and make normal progress toward completion of certification requirements shall receive priority over new applicants.

(7) The amount of loan under this section for a part-time student shall not exceed tuition and institutional fees payable by such a recipient in the required courses taken each semester. The amount of summer loan for teachers enrolled full time in the required courses shall be $833 per summer semester.

(8) The last date for receipt of applications for loans by the Assistance Authority under Section 1 of this regulation shall be no later than six (6) weeks before the beginning of the relevant semester.

Section 2. (1) At least seventy (70) percent of the annual appropriation for KRS 156.611 will be used to provide incentive loans to persons enrolled full time during the regular school term in teacher education programs at institutions in Kentucky with the intention of obtaining certification to teach in one of the critical fields identified in KRS 156.611.

(2) Eligible applicants for loans must have a grade point average of at least two and five-tenths (2.5). Applicants who have successfully completed one (1) or more years in this program shall receive priority over new applicants. For first time applicants, priorities will be given according to rank order established in accordance with subsection (4) of this section.

(3) The number of loans awarded to students at each institution will be in proportion to the number of certified teachers produced by the institution in the most recent year for which such information is available.

(4) The college or education department at each participating institution shall establish a screening committee to verify that a student is eligible for a loan under this section. The committee will certify that eligible loan applicants have a reasonable chance for completing the teacher education program in the selected major. The committee shall rank order all eligible applicants based on the following criteria:

(a) Grade point average or, for persons holding a bachelor's degree, the higher of the grade point average for undergraduate work or the NTE/GRE scores. Weight: fifty (50) out of a maximum of 100.

(b) College entrance scores. Weight: twenty (20) out of a maximum of 100.

(c) Consideration to students from minority groups. Weight: twenty (20) out of a maximum of 100.

(d) Need for teachers in chosen field as determined by the Department of Education. Weight: ten (10) out of a maximum of 100.

(5) Once all criteria in subsection (4) of this section have been evaluated and two (2) or more applicants appear equally qualified, priority shall be given to graduates of Kentucky high schools and Kentucky residents and applicants with letters of recommendation indicating that the applicant possesses aptitudes related to excellence in teaching mathematics/science.

(6) The recipient shall maintain at least a two and five-tenths (2.5) grade point average and make normal progress toward receiving certification in one (1) of the areas listed in KRS 156.611 in order to remain in the loan program.

(7) The screening committee shall forward in rank order, the applications and names of all eligible applicants to the Kentucky Higher Education Assistance Authority and to the financial aid officer at the selected institutions no later than the second week of July for academic year loans and no later than the second week of April for summer semester loans.

(8) The maximum amount of loan for recipients under this section shall be $1,250 per semester or $2,500 annually.

Section 3. Proceeds of a loan under Sections 1 or 2 of this regulation shall be used by the recipient exclusively for payment of tuition and other institutional charges payable by the recipient to the participating institution.

Section 4. Funds allotted to institutions and not utilized by them, principal and interest paid by recipients, and any money not utilized under Section 1 of this regulation shall be used to grant additional loans under Section 2 of this regulation. Recipients for the loans will be selected from applications forwarded by the institutions using the same eligibility and selection criteria as outlined in Section 2 of this regulation.

Section 5. Qualifying service as a certified teacher in one (1) of the critical shortage areas shall be rendered within the Commonwealth of Kentucky in a public, accredited school in grades seven (7) through twelve (12), and verification of services by the local school district superintendent or building principal shall be submitted in writing to the Kentucky Higher Education Assistance Authority.

Section 6. The interest rate on loans made under KRS 156.611 shall be the prime rate effective the first banking day in July each year plus one (1) percent. The interest rate so determined shall apply to all loans made during the following fall, spring and summer semester and shall remain fixed for the duration of the loan. Interest accruing on the unpaid principle of each loan shall be computed from the date of disbursement of the respective loan, and such interest shall continue to accrue until the loan is paid in full.

Section 7. Repayment of loans may be deferred by the Kentucky Higher Education Assistance Authority for appropriate cause when it is in the best interest of the program, and it shall be the recipient's responsibility to request deferrals.

Section 8. Each disbursement of loans authorized under this regulation shall be evidenced by a promissory note prescribed by the

Kentucky Higher Education Assistance Authority. Repayment of all outstanding notes shall become immediately due upon the recipient's ceasing to be enrolled as required in Sections 1(1) or 2(1) of this regulation. Otherwise, repayment of each note shall become due or forgiveness of each note shall occur, in sequential order beginning with the earliest note, in each of six (6) consecutive semesters, excluding periods of deferment, immediately following the recipient's completion of the required program of studies. Said repayment or forgiveness shall be determined on the basis of whether the recipient has rendered qualifying service in accordance with Section 5 of this regulation. Written notification of demand for repayment shall be sent by the Kentucky Higher Education Assistance Authority to the recipient's last known address, and shall be effective upon mailing. The Kentucky Higher Education Assistance Authority may agree to accept repayment in installments in accordance with a schedule established by the Assistance Authority. In the event that more than one (1) note has come due for repayment and remain unpaid, then payments shall first be applied to the earliest unpaid note. Payments shall be applied first to accrued interest and then to principal.

Section 9. In the event that funds are not sufficient to satisfy all applications, the loans shall first be awarded to those qualifying applicants who previously received loans. In the event that funds remain insufficient to satisfy all applications of those previously receiving loans, then, loans shall be prorated in accordance with the cumulative amount previously received by the applicant.

PAUL P. BORDEN, Executive Director
APPROVED BY AGENCY: December 2, 1985
FILED WITH LRC: December 13, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation is scheduled to be held at 1050 U.S. 127 South, Frankfort, Kentucky, on Thursday February 27, 1986, at 10 a.m. Any interested persons wishing to comment or attend the hearing pursuant to KRS Chapter 13A must submit their written comments or statement of intent to attend to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, no later than Monday, February 24, 1986. Absent such response from the public, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden
(1) Type and number of entities affected: 179 student loan recipients and 23 participating schools.
(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: Participating schools are responsible for distributing and receiving student applications. Applicants are ranked by the schools in accordance with criteria established by KHEAA, and the results are reported to KHEAA. Schools are also responsible for monitoring and reporting student enrollment status.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $254,444 in loans to be disbursed.
2. Continuing costs or savings: Contingent on future appropriations.
3. Additional factors increasing or decreasing costs: Administrative costs are borne by agency through agency revenues. No General Fund appropriations are used for administrative expenses.
(b) Reporting and paperwork requirements: Notification to participating schools of loans awarded to students. Monitoring of student enrollment status.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is necessary to continue operation of the Mathematics and Science Teacher Incentive Loan Program following transfer of the program to KHEAA from the Department of Education. While alternative program structures are under consideration, adoption of this regulation is necessary to prevent interruption of the program. This regulation mirrors existing 704 KAR 15:090 which is no longer applicable by reason of the transfer of program operation and regulatory authority to KHEAA pursuant to KRS 156.611.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 704 KAR 15:090 is superseded by this regulation. By amendment of KRS 156.611 transferring program administration and regulatory authority to KHEAA, 704 KAR 15:090 promulgated by the Department of Education is no longer applicable to continued operation of the program.
(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. Regulation sets forth student eligibility for Math/Science Teacher Incentive Loans. Eligibility requirements must be uniform to be equitable to all applicants.

DEPARTMENT OF PERSONNEL

101 KAR 1:145. Employee evaluation plan; classified.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires personnel rules for classified service employees to provide for uniform standards and methods of appraising work performance of all employees, and for the use of such methods of appraisal in personnel actions, and for the development and operation of programs to improve the work effectiveness of employees. This regulation implements such duties by establishing a uniform employee evaluation system.

Section 1. Eligible Employees. Each full-time employee who has completed his probationary period of service; each part-time employee who works over 100 hours each month who has completed his probationary period of service; each federally funded, time limited (FFTL) employee who has completed six (6) months service; and each employee on probation as a result of promotion shall have his work performance evaluated on an annual basis, according to criteria developed by the Employee Evaluation Committee.

Section 2. Work Performance Evaluation. (1) Each evaluator, the first line supervisor, shall assess employee performance in five (5) areas: job knowledge and skills; quality of work; productivity; work progress; and level of responsibility and interpersonal skills.

(2) Each area shall be assessed as exceeding performance requirements, meeting performance requirements or as being below performance requirements.

(3) The overall rating shall be determined by the ratings on each of the five (5) job factors:

(a) "Exceeds requirements." The employee shall receive an "exceeds requirements" rating when his job performance exceeds requirements on three (3) or more of the job factors, and he receives no "below requirements" ratings on any of the job factors.

(b) "Below requirements." The employee shall receive a "below requirements" rating when his job performance is below requirements on three (3) or more of the job factors. The evaluator shall provide the employee with suggestions for improvement and training, as needed.

(c) "Meets requirements." The employee who receives any other combination of ratings on the job factors shall receive an overall rating of "meets requirements."

Section 3. Annual Evaluation. (1) Evaluation shall take place annually. At the beginning of the evaluation period, the evaluator shall identify and review the job duties and factors to be evaluated with the employee and record the job description on the re-evaluation form. After six (6) months, the evaluator shall assess the employee's job performance, discuss the findings with the employee, and initiate corrective measures, as needed. After twelve (12) months, the evaluator shall assess the employee's job performance, and discuss the overall rating with the employee.

(2) The evaluator of each employee shall be the first line supervisor, providing that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period, he shall evaluate all employees under his supervision prior to leaving. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period under negative circumstances, the next line supervisor shall evaluate the employees of the supervisor who has left. If an employee transfers to a new job within ninety (90) days prior to the end of the evaluation period, he shall be evaluated by his prior supervisor.

(3) All employees shall be evaluated during the same time period. All ratings shall be completed and the results submitted to the Department of Personnel by February 1 of each year. Evaluators shall schedule evaluation conferences to allow twenty-five (25) working days for reconsideration, as needed.

Section 4. Request for Reconsideration. (1) Any employee may request reconsideration of his evaluation. In response to an employee's request, a reconsideration meeting of the employee and the evaluator shall be held and shall be scheduled no sooner than two (2) working days and no later than five (5) working days after the evaluation was first presented to the employee.

(2) If the employee does not agree with the rating following the reconsideration meeting, he may request further review of the evaluation by submitting a written request to the second line supervisor within five (5) working days following the reconsideration meeting.

(3) The reviewer, the second line supervisor, shall obtain a written statement from the evaluator and employee, or meet individually with the evaluator and with the employee to discuss the rating. Within fifteen (15) working days from receipt of the request for review, the reviewer shall inform the employee and the evaluator in writing of his determination.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 24, 1986 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 February 19, 1986 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 KAR Title 101.

(a) Direct and indirect costs or savings to those affected: While the plan may have a fiscal impact later, upon amendment, at present there is 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: Each first line supervisor will complete mid-year and final evaluations on an annual basis on each supervised employee.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: See (1)(a).

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: See (1)(b).

(3) Assessment of anticipated effect on state and local revenues: None, at present.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Employee Evaluation Committee designed program at the

request of the Governor.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees under KRS Chapter 18A are covered by these new regulations.

DEPARTMENT OF PERSONNEL

101 KAR 1:205. Employee evaluation plan; unclassified.

RELATES TO: KRS 18A.030, 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service in positions enumerated in KRS 18A.115(1)(f), (g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these rules shall be approved by the Governor and promulgated according to KRS Chapters 12 and 13A; nothing herein shall be construed to preclude optional use of rules promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.115 and on behalf of members of state boards and commissions who work on a full-time salaried basis.

Section 1. Eligible Employees. Each permanent full-time employee after six (6) months of service; each part-time employee who works over 100 hours each month after six (6) months of service; each federally funded, time limited (FFTL) employee who has completed six (6) months service shall have his work performance evaluated on an annual basis, according to criteria developed by the Employee Evaluation Committee.

Section 2. Work Performance Evaluation. (1) Each evaluator, the first line supervisor, shall assess employee performance in five (5) areas: job knowledge and skills; quality of work; productivity; work progress; and level of responsibility and interpersonal skills.
(2) Each area shall be assessed as exceeding performance requirements, meeting performance requirements or as being below performance requirements.
(3) The overall rating shall be determined by the ratings on each of the five (5) job factors:
(a) "Exceeds requirements." The employee shall receive an "exceeds requirements" rating when his job performance exceeds requirements on three (3) or more of the job factors, and he receives no "below requirements" ratings on any of the job factors.
(b) "Below requirements." The employee shall receive a "below requirements" rating when his job performance is below requirements on three (3) or more of the job factors. The evaluator shall provide the employee with suggestions for improvement and training, as needed.
(c) "Meets requirements." The employee who receives any other combination of ratings on the job factors shall receive an overall rating of "meets requirements."

Section 3. Annual Evaluation. (1) Evaluation shall take place annually. At the beginning of the evaluation period, the evaluator shall identify and review the job duties and factors to be evaluated with the employee and record the job description on the re-evaluation form. After six (6) months, the evaluator shall assess the employee's job performance, discuss the findings with the employee, and initiate corrective measures, as needed. After twelve (12) months, the evaluator shall assess the employee's job performance, and discuss the overall rating with the employee.
(2) The evaluator of each employee shall be the first line supervisor, providing that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period, he shall evaluate all employees under his supervision prior to leaving. If a supervisor leaves within ninety (90) days prior to the end of the evaluation period under negative circumstances, the next line supervisor shall evaluate the employees of the supervisor who has left. If an employee transfers to a new job within ninety (90) days prior to the end of the evaluation period, he shall be evaluated by his prior supervisor.
(3) All employees shall be evaluated during the same time period. All ratings shall be completed and the results submitted to the Department of Personnel by February 1 of each year. Evaluators shall schedule evaluation conferences to allow twenty-five (25) working days for reconsideration, as needed.

Section 4. Request for Reconsideration. (1) Any employee may request reconsideration of his evaluation. In response to an employee's request, a reconsideration meeting of the employee and the evaluator shall be held and shall be scheduled no sooner than two (2) working days and no later than five (5) working days after the evaluation was first presented to the employee.
(2) If the employee does not agree with the rating following the reconsideration meeting, he may request further review of the evaluation by submitting a written request to the second line supervisor within five (5) working days following the reconsideration meeting.
(3) The reviewer, the second line supervisor, shall obtain a written statement from the evaluator and employee, or meet individually with the evaluator and with the employee to discuss the rating. Within fifteen (15) working days from receipt of the request for review, the reviewer shall inform the employee and the evaluator in writing of his determination.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at noon.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 24, 1986 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

February 19, 1986 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 KAR Title 101.
(a) Direct and indirect costs or savings to those affected: While the plan may have a fiscal impact later, upon amendment, at present there is 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: Each first line supervisor will complete mid-year and final evaluations on an annual basis on each supervised employee.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: See (1)(a).
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: See (1)(b).
(3) Assessment of anticipated effect on state and local revenues: None, at present.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Employee Evaluation Committee designed program at the request of the Governor.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees under KRS Chapter 18A are covered by these new regulations.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing

201 KAR 20:115. Limited licensure.

RELATES TO: KRS 61.874(2), 314.011(13), 314.041(9), 314.051(9), 314.091, 314.101(3)
PURSUANT TO: KRS Chapter 314
NECESSITY AND FUNCTION: To implement limited licensure as provided in KRS Chapter 314 to safeguard the public health and safety.

Section 1. The board may issue a limited temporary work permit or limited license which restricts the scope of nursing practice of an applicant/licensee and/or places conditions upon a permit or license to practice nursing.

Section 2. Definitions. (1) "Restriction" means a limitation on the scope of licensed nursing practice as defined in KRS 314.011(5) or (9).
(2) "Condition" means a requirement which the applicant/licensee must meet to practice nursing.
(3) "Handicap" means a physical, mental, or cognitive impairment which is considered sufficient to impair an applicant's/licensee's ability to safely perform the full scope of nursing practice as defined in KRS 314.011(5) or (9).

Section 3. A limited temporary work permit or limited license may be issued to:
(1) A qualified applicant/licensee who has a handicap; or
(2) A qualified applicant/licensee who holds a license with restrictions or conditions in another jurisdiction as the result of a handicap and who meets the requirements for licensure by endorsement; or
(3) An applicant/licensee who has been subjected to disciplinary action by the board pursuant to KRS 314.091; or
(4) An applicant/licensee who holds a license with restrictions or conditions in another jurisdiction as a result of disciplinary action and has had action by the board pursuant to KRS 314.091.
(5) A qualified applicant for licensure by examination whose handicap requires special provisions to be made in order for the applicant to complete the examination.

Section 4. The restrictions or conditions imposed by the board on a limited temporary work permit or limited license may include:
(1) Prohibiting the performance of specific nursing acts as defined in KRS 314.011(5) and (9), such as: access to, responsibility for, or the administration of controlled substances; administration of any medication; supervisory functions; or any act which the licensee or applicant cannot safely perform.
(2) Requiring the applicant/licensee have continuous, direct, onsite supervision by a registered nurse, licensed physician, or dentist.
(3) Specifying the applicant's/licensee's setting(s) of practice.
(4) Specifying the types of patients to whom the applicant/licensee may give nursing care.
(5) Requiring the applicant/licensee to notify the board in writing of any change in name, address, or employment status.
(6) Requiring the applicant/licensee to have his employer submit to the board written reports of performance and/or compliance with the requirements set by the board.
(7) Requiring the applicant/licensee to submit to the board evidence of physical and/or mental health evaluations, counseling, therapy and/or drug screens.
(8) Meeting with representatives of the board.
(9) Issuing the license or temporary work permit for a specified period of time.

Section 5. The board shall determine if an applicant or licensee has a handicap which is considered sufficient to impair the individual's ability to safely perform the full scope of nursing practice when it is reported that the applicant or licensee has a handicap or when a complaint is filed against the applicant or licensee pursuant to 201 KAR 20:161.

Section 6. Limited Licensure for an Individual

with a Handicap. (1) Prior to the issuance of a limited temporary work permit or limited license to an individual with a handicap, the individual shall submit and the board shall consider statements from a qualified person(s) who has personal knowledge of the applicant or licensee, to determine whether an impairment restricts the capabilities of the individual to practice the full scope of nursing. The board may also seek and consider statements from other qualified persons.

(a) Such qualified persons may include, but are not limited to a physician, psychiatrist, psychologist, nurse, physical therapist, rehabilitation counselor, employer, potential employer, co-workers, or any other person with personal knowledge of the applicant or licensee.

(b) Such statements may include, but are not limited to reports from qualified persons which describe the functional abilities and impairments of the individual, and which contain a health history, report of symptoms, signs, physical findings, and prognosis relating to the impairment, and a proposed job description when applicable. The applicant or licensee shall have the right to examine any reports or materials in the possession of the board regarding an alleged handicap and have copies of such materials furnished to him for cost. The applicant or licensee may submit reports or rebuttals to reports for evaluation by the board.

(2) If an individual has a handicap which is expected to improve, or is progressive in impairment, then the board shall determine at what periodic intervals the need for the restrictions or conditions of the license will be reviewed.

(3) The applicant or licensee shall have the right to a hearing at which the procedural rules of 201 KAR 20:162 apply to determine whether an alleged handicap warrants the issuance of a limited temporary work permit or license and the appropriate conditions, if any, to be imposed.

Section 7. The board shall determine and define in writing the specific restrictions and/or conditions of a limited temporary work permit or limited license as cited in Section 4 of this regulation.

Section 8. The permit or license form shall bear a notation that the permit/license is limited.

Section 9. The applicant/licensee, if employed in nursing, shall be responsible for informing current or potential employers of the restrictions and/or conditions of the temporary work permit or license. If the applicant/licensee is employed in nursing at the time the limited temporary work permit or limited license is issued initially, the board shall notify the individual's employer of the restrictions and/or conditions of the license.

Section 10. The board shall monitor whether the licensee, holding a limited temporary work permit or limited license, is in compliance with requirements set by the board.

Section 11. If the applicant/licensee fails to comply with any restriction and/or condition of the limited temporary work permit or limited license the applicant/licensee shall be subject to disciplinary action pursuant to KRS 314.091.

Section 12. The board may grant full privileges of licensure based upon evidence that the nurse is capable of safely practicing the full scope of nursing practice and has complied with the restrictions and/or conditions of the limited license as set forth by the board.

SHARON M. WEISENBECK, Executive Director
APPROVED BY AGENCY: October 18, 1985
FILED WITH LRC: December 16, 1985 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 25, 1986 at 1 p.m. in Room 447 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by February 20, 1986: Bernadette M. Sutherland, Assistant Executive Director, Kentucky Board of Nursing, Suite 430, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck

(1) Type and number of entities affected: The total number of licensees who have "handicaps" (as defined in the proposed regulation) is unknown at this time. It is estimated to be less than 0.15% of the total 32,642 individuals who hold active licensure to practice nursing in Kentucky.

(a) Direct and indirect costs or savings to those affected: Affected individuals assume the cost for necessary documents/statements; and personal costs incurred if a hearing is required.

1. First year: As above 1(a).

2. Continuing costs or savings: Individuals assume the costs for any follow-up documentation submitted to the board.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The board may require persons to periodically meet with representatives of the board, or to submit evidence of counseling, therapy or drug screens or other documentation. Affected individuals assume costs of: travel expenses for such meetings, counseling, therapy, drug screens or other documentation.

(b) Reporting and paperwork requirements: Affected individuals will be required to submit written reports to the board regarding their functional capabilities or limitations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Kentucky Board of Nursing assumes costs for: special provisions for completion of licensure examination; processing licensure and renewal applications for persons who are eligible for a limited license, i.e., staff time and correspondence; obtaining reports from other jurisdictions regarding an individual who applies for licensure in Kentucky and either holds a limited license or has had disciplinary action in another jurisdiction; individual's meetings with a representative of the board; a hearing, if required, and monitoring the compliance of licensee.

1. First year: The majority of current registered nurse licensees eligible for a limited license, will be identified during the first year.

2. Continuing costs or savings: The costs for issuing limited licenses will be ongoing. The costs after the first two years of

implementation should decrease as the majority of persons who are eligible for a limited license will be identified during this time frame.

3. Additional factors increasing or decreasing costs: The number of persons eligible for limited licensure will vary from year to year. If hearings are required, the cost of implementing the regulation will increase.

(b) Reporting and paperwork requirements: All information which reports that an individual may be eligible for a limited license will be evaluated. All licensees holding a limited license will be monitored for compliance with restrictions or conditions, if any.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Various alternatives were assessed. The most obvious, to make no change, was rejected because it was determined that it is potentially unsafe for a licensee with a "handicap" to continue to hold an unrestricted license which permits the full scope of nursing practice. Another alternative, to deny licensure to a person with a handicap was assessed, and it was determined that many persons with handicaps are capable of safely practicing nursing in a limited manner. Similarly, the option of permitting the employer and/or individual licensee to regulate and determine whether/what conditions or restrictions should be placed upon a licensee's practice of nursing was rejected because licensees may: fail to report a handicap, change employers frequently, or, enter private practice without adapting sufficiently to their handicap to assure safe practice. Therefore, employers may not be aware that a handicap exists. Finally, the responsibility for monitoring practice competency rests with the Board of Nursing.

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

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

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes. Tiering was applied in that the proposed regulation cites various conditions and restrictions which may be imposed by the board on the practice of select licensees. The proposed regulation permits a hearing if requested by the individual or if deemed necessary by the board, in order to assess each person on an individual basis. The proposed regulation takes into account that individuals may be issued a limited license for variable periods of time, and allows for periodic review of the need for the restrictions or conditions.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 1:170. Grass carp acquisition and stocking permit.

RELATES TO: KRS 150.010, 150.025, 150.180
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation is necessary to control the acquisition, use, and proliferation of triploid (sterile) grass carp.

Section 1. Individuals wishing to purchase grass carp (Ctenopharyngodon idella) for aquatic vegetation control purposes must first obtain an Acquisition and Stocking Permit from the Division of Fisheries using the following procedures:

(1) The pond owner must contact the appropriate District Fishery Biologist for an on-site inspection of the pond and vegetation problem. The biologist will provide the pond owner with stocking recommendations, spillway barrier requirements and an application form.

(2) The pond owner must mail the completed application to the Division of Fisheries, Frankfort office for final approval and issuance of the permit.

(3) After receiving the approved permit, the pond owner must provide a copy of the permit to the grass carp supplier before the fish can be purchased or transported.

(4) A fish delivery notification card will be provided to the pond owner along with the permit. When the fish delivery date is confirmed, the pond owner must complete the notification card and mail it to the Frankfort office.

(5) Pond owners may only purchase grass carp from suppliers who are certified to provide 100 percent triploid grass carp.

Section 2. Suppliers may become certified by providing the Department of Fish and Wildife Resources with written assurances that each grass carp sold and/or delivered for use in Kentucky waters will be tested and certified (in writing) to be a triploid fish. The Division of Fisheries shall maintain a list of certified suppliers and provide a copy of such list to each pond owner at the time the permit is issued.

Section 3. (1) The Division of Fisheries will take random samples of grass carp shipped into and within Kentucky for stocking. The fish samples will be tested for triploidy and should diploid (fertile) fish be discovered, the supplier found responsible will be advised in writing and requested to correct the problem. If diploid fish are found a second time, the supplier will lose his certification and be removed from the approved list of suppliers for a period of one (1) year from the date of occurrence. Should a third violation occur, certification will be permanently revoked.

(2) The supplier will also be responsible for removing and destroying all grass carp from the shipment containing diploid fish that were stocked in Kentucky waters, and shall reimburse the pond owner the full purchase price of the fish including transportation costs or replace the lost fish. Failure to comply with this provision will result in loss of certification.

DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR. Chairman
G. WENDELL COMBS, Secretary
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 27, 1986 at 10 a.m., in the meeting room of the Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, 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, Commissioner
(1) Type and number of entities affected: Approximately 100,000 private pond users.
(a) Direct and indirect costs or savings to those affected: Significant savings over use of chemical herbicides.
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: Some additional workload.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Some required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives more costly.
(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.

TOURISM CABINET
Department of Fish and Wildife Resources

301 KAR 1:180. Fisheries management permit for private waters.

RELATES TO: KRS 150.010, 150.025, 150.470
PURSUANT TO: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: To allow owners of non-public lakes to implement special fishery management programs which would otherwise be in conflict with statewide regulations.

Section 1. Special management regulations for individual private lakes may be imposed provided an appropriate Fisheries Management Permit request is submitted to the Division of Fisheries, Frankfort office, and includes the signatures of the lake owner, county conservation officer, and the signature and recommendations of the appropriate District Fishery Biologist. With the approval of the Director, Division of Fisheries, a Fisheries Management Permit will be issued to the lake owner and will specify the recommended management program. The permit will serve as the owner's authority to impose the special regulations.

Section 2. It will be be owner's responsibility to conspicuously post the regulation in a manner so that those anglers fishing the lake will be aware of such restrictions.

DON R. McCORMICK, Commissioner
CHARLES E. PALMER, JR. Chairman
G. WENDELL COMBS, Secretary
APPROVED BY AGENCY: January 15, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on February 27, 1986 at 2 p.m., in the meeting room of the Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, 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, Commissioner
(1) Type and number of entities affected: Approximately 100,000 private pond owners.
(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 required
(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: Some 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: 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:one
Tiering:
Was tiering applied? No. The amendment itself is not tiered, however, the complete regulation is.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Research and Planning

701 KAR 7:010. Educational innovation incentive grants.

RELATES TO: KRS 158.805
PURSUANT TO: KRS 156.070, 158.805
NECESSITY AND FUNCTION: KRS 158.805 creates the Educational Innovation Incentive Fund to encourage the development of innovative programs to meet the educational needs of the citizens of the Commonwealth of Kentucky, and to provide grants from the State Board of Education to teachers and school districts for specified purposes. The statute gives the State Board of Education the responsibility for developing criteria and funding guidelines for awards of grants from the fund. This regulation establishes the criteria for awarding of such grants and applicable funding guidelines.

Section 1. The State Board of Education shall provide Educational Innovation Incentive Fund grants to individual teachers or groups of teachers, individual schools, school districts or groups of school districts. The Educational Innovation Incentive Fund Advisory Committee shall review proposals for grants and make recommendations to the board relating to the merits of each proposal.

Section 2. (1) The State Board of Education shall award grants to eligible recipients as defined in Section 1 of this regulation for the purposes enumerated in KRS 158.805 (1)(a)-(d).
(2) Each local board of education shall ensure that all instructional personnel are made aware of the criteria for awarding of grants and the applicable funding guidelines.

Section 3. The State Board of Education shall award Educational Innovation Incentive Fund grants in accordance with the funding restrictions established in KRS 158.805(4) and the following:
(1) Teacher grants may be awarded annually up to $5,000 each, and school grants may be so awarded up to $20,000.
(2) Within a given school district, the teacher and school grants may not exceed fifteen (15) percent of the total incentive fund appropriation for each fiscal year. The total of all teacher and school grants for any one (1) district shall not exceed $375,000 based on a $2.5 million annual appropriation.
(3) In addition to the teacher and school grants, each school district shall be eligible to receive one (1) district grant up to $100,000 annually.
(4) Multi-district grants may be awarded up to $125,000 each annually. A district shall be eligible to participate in one (1) multi-district grant annually.
(5) Priority areas for funding not to exceed two (2) years for experimental and model programs shall be established by the state board each year at its March meeting and incorporated in this regulation.
(6) Equipment may be approved for purchase at the discretion of the state board. The cost of equipment purchased by an grantee shall not exceed twenty (20) percent of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar-for-dollar basis. Renovation and construction costs shall not be eligible for approval.
(7) The Educational Innovation Incentive Fund shall be targeted for programs and activities that are not currently funded by other appropriations or grants.
(8) Administrative costs allowable for each funded proposal shall not exceed ten (10) percent of the total amount of the grant.
(9) Grant awards shall not supplant funds from any other source.
(10) Districts receiving grants from the Educational Innovation Incentive Fund shall be required to indicate an intention to continue successful programs within the district.
(11) In the event that all the funds appropriated for FY 87 are not awarded hereunder, the state board shall consider the Educational Innovation Incentive Fund Advisory Committee's recommendations regarding the funding of additional quality proposals in a second review, regardless of a district's receipt of other grants from the fund.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: January 7, 1986
FILED WITH LRC: January 15, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on February 24, 1986, at 10 a.m., Eastern Standard Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its January meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before February 19, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rebecca Brown
(1) Type and number of entities affected: All public school districts are eligible to participate.
(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: Districts receiving grants will be required to submit reports as defined by statute and the state board.
(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: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering was not applied because of the need for uniformity.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Registry of Election Finance

801 KAR 1:110. Financial disclosure report.

RELATES TO: KRS 61.710 to 61.780
PURSUANT TO: KRS 13A.110, 61.760(2)
NECESSITY AND FUNCTION: KRS 61.760 requires the Registry of Election Finance to adopt such regulations and official forms and perform such duties as are necessary to implement the provisions of KRS 61.710 to 61.780. The Registry is authorized and empowered to develop prescribed forms for making required reports. KRS 61.760(2)(a).

Section 1. "Financial disclosure report" form can be obtained at the Kentucky Registry of Election Finance, 1604 Louisville Road, Frankfort, Kentucky 40601.

CHARLES BEACH, JR., Chairman
MELVIN WILSON, Secretary
APPROVED BY AGENCY: December 30, 1985
FILED WITH LRC: January 7, 1986 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 25, 1986 at 9 a.m. at the office listed below. Anyone interested in attending the hearing shall notify, in writing by February 20, 1986, the following: Raymond E. Wallace, Executive Director, Kentucky Registry of Election Finance, 1604 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Raymond E. Wallace, Executive Director
(1) Type and number of entities affected: Members of the General Assembly, Justices and Judges of the Court of Justice, Commonwealth Attorneys and all candidates for those offices (500 AVIOR).
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Cost - $650.00.
2. Continuing costs or savings: Cost - $650.00 per annum.
3. Additional factors increasing or decreasing costs: Costs may vary depending on total number of candidates reporting.
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:081. Construction standards for components of onsite sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of onsite sewage disposal systems except for systems with a surface discharge. The purpose of this regulation is to establish minimum component standards including design, construction, and materials specifications for onsite sewage disposal systems in Kentucky in order to protect the public health.

Section 1. Citation of Regulation. This regulation may be cited as the "Construction standards for components of onsite sewage disposal systems."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:
(1) "Aerobic treatment unit" means any sewage treatment unit which utilizes the principle of oxidation in the decomposition of sewage by the introduction of air into the sewage.
(2) "Approved" means that which has been considered acceptable to the cabinet.
(3) "Cabinet" means the Cabinet for Human Resources and its agents.
(4) "Effluent" means the liquid discharge of a septic tank or other sewage treatment unit.
(5) "Lateral field" means the area in which lateral lines are installed or can be used to generally describe the soil absorption portion of the subsurface sewage treatment and disposal system.
(6) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and distribute the effluent for further treatment and absorption into the soil beneath the ground surface.
(7) "Low pressure pipe system" means an onsite sewage disposal system consisting of a septic tank(s) or aerobic treatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.
(8) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
(9) "Onsite sewage treatment and disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for

treatment and ultimate disposal under the surface of the ground.

(10) "Secretary" means the Secretary for the Cabinet for Human Resources.

(11) "Septic tank" means a watertight sewage treatment unit designed and constructed to receive raw sewage, separate solids from liquid, an aerobically digest organic matter, store liquids through a period of detention, and allow the clarified effluent to discharge.

(12) "Septic tank system" means a subsurface sewage treatment and disposal system consisting of a septic tank(s), a gravity-fed lateral field, necessary pipe lines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.

Section 3. Approval Procedures. (1) All commercial manufacturers and suppliers of materials, components, and equipment designed or intended for use in the construction of onsite sewage disposal systems shall obtain approval of such materials, components, and equipment from the cabinet prior to their sale or use in Kentucky. Such approval shall be based upon conformance to recognized design, materials, construction, and performance standards of the National Sanitation Foundation (NSF), the American Society for Testing and Materials (ASTM), and the standards set forth in this regulation.

(2) Manufacturers, purveyors and suppliers of materials, components, and equipment shall submit the following information, as applicable, to the cabinet in review and consideration in the approval process:

(a) All applicable plans, specifications, process descriptions, and other relevant data.

(b) Supportive test data from independent laboratories, testing firms, NSF, ASTM, and other approved organizations.

(c) Other pertinent information as requested by the cabinet.

(3) New or experimental materials, components, or equipment shall be submitted for approval as outlined in subsection (2) of this section and the following additional requirements and restrictions shall apply:

(a) Those materials, components, or equipment which consist of modifications to existing approved products shall be considered for approval after demonstration, through independent teting of the modifications, that improved performance, service life, or ease of maintenance and operation results.

(b) Those materials, components, or equipment which involve new or experimental technologies relating to design, construction, or operational process shall be considered for approval on a probationary basis. During the probationary period, it shall be the responsibility of the person seeking approval of such product to contract with an independent testing firm to provide monitoring of the performance of the product in its intended usage. Such monitoring of the product shall include documentation of the site conditions where the product is installed, the waste load generated by the user and its constitution, and other parameters deemed necessary by the cabinet. In the event that the product fails to perform in an acceptable manner, it shall be the responsibility of the person seeking its approval to replace the product with another product which is approved by the cabinet for that particular use.

(c) Any materials, components, or equipment which, in the opinion of the cabinet, meet the requirements for approval after careful study and testing, as required, shall be considered to be approved for use in Kentucky for the specific purpose(s) intended. Such approval shall be made in writing to the person requesting same and shall set forth any conditions or restrictions for the use of the product when deemed necessary by the cabinet. Each product, so approved, shall be listed by the cabinet on an "approved listing of materials, components, and equipment," which shall be updated on a timely basis and distributed to local health departments and other interested parties on request.

Section 4. Septic Tank Standards. (1) Precast concrete.

(a) All precast concrete septic tanks shall be designed and constructed so as to provide sufficient rigidity and structural strength to prevent damage due to hydrostatic water pressure and support vertical uniform loading of 150 lb./sq. ft. on the top of the tank.

(b) A minimum and product strength of 4,000 pound per square inch shall be used in the construction of the tank.

(c) The top, bottom, ends and sides of the tank shall have a minimum thickness of two and one-half (2 1/2) inches.

(d) The tank shall be reinforced by using a minimum reinforcing of six (6) inch No. 10 gauge welded steel reinforcing wire lapped at least six (6) inches. Other reinforcing methods may be used provided that such other methods can be demonstrated to the satisfaction of the cabinet to be equal, or superior, to the method described herein.

(e) The tank shall be so designed and constructed that all joints, seams, or other openings shall be watertight in use. Asphalt compounds, neoprene gaskets, or other acceptable sealant materials shall be used to insure watertightness.

(f) At least two (2) manholes shall be provided to permit access for maintenance of the tank. Manholes shall have a minimum dimension of ten (10) inches and a maximum of twenty-four (24) inches measured on the bottom edge of the manhole opening into the tank. Manholes shall be located on each end of the tank over the inlet and outlet structures (baffles or tees). The manhole openings shall be beveled so as to adequately seal and support the manhole cover. The manhole cover shall possess sufficient strength to support a uniform load of 150 lb./sq. ft. without damage to the cover or tank and provide a means for removal (handles, etc.).

(g) Cast-in-place baffles, at inlet and outlet ends of the tank have a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. For cast-in-place baffles reinforcing wire into and along the tank sidewalls a minimum of (6) inches for proper anchorage. For tanks using drop-in baffles, a molded in slot or groove with a minimum one (1) inch penetration into the tank sidewall shall be provided to retain the baffle. Such slot or groove shall be slightly tapered to produce a secured "wedge fit" baffle. For bolt-on tee-type baffle structures, stainless steel bolts, washers and nuts shall be used for anchorage. Such bolts shall be cast-in-place in the baffle

or tank endwall and securely anchored by attachment to tank or baffle reinforcing material. On those tanks where baffle attachment bolts penetrate through the tank endwall suitable bushings or seals shall be used to render bolt holes watertight. Suitable sealants shall also be used on all baffle edges which contact the tank endwall to prevent shortcircuiting of tank contents.

(h) In lieu of baffles, sanitary tees or corrosion resistant materials (fiberglass, plastic, or cast iron) may be used as long as joints are properly sealed and the specified dimensions above and below the liquid level of the tank are maintained.

(i) Internal dimensions of the tank shall fall within plus or minus one (1) foot of the recognized proportional ratios of 2:1 to 3:1, the length being approximately two (2) to three (3) times the width. The minimum liquid depth shall be thirty-four (34) inches with maximum depth of fifty-four (54) inches depending upon tank capacity. The inlet and outlet pipe knockouts or holes shall be of sufficient diameter to accept a minimum four (4) inch diameter pipe and shall be so designed as to provide a minimum height difference of three (3) inches for the inlet pipe invert above the outlet pipe invert. Inlet and outlet holes shall be so located on the ends of the tank as to provide a minimum freeboard space of ten (10) inches to one (1) foot between the liquid level and the inside top surface of the tank for scum storage. Both inlet and outlet baffles or tees shall extend above the liquid level of the tank to within at least two (2) inches but not less than one (1) inch of the inside top surface of the tank to contain scum and provide venting space for gases. Baffle designs which extend to the inside top of the tank may be used provided that a slotted vent space of a minimum height of one (1) inch by four (4) inches in width is located at the juncture of the baffle and tank top in the center of the baffle. The inlet tee or baffle shall extend below the liquid level between eight (8) to ten (10) inches, and the outlet baffle or tee shall extend downward to thirty-five (35) to forty (40) percent of the total liquid depth of the tank. When baffles are used, the distance between the outlet baffle and tank endwall shall be between four (4) to six (6) inches, and the distance between the inlet baffle and endwall shall be between six (6) to ten (10) inches.

(j) All tanks offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name, the serial number assigned to the manufacturer's plans and specifications approved by the cabinet, and the liquid or working capacity of the tank. This imprint, stencil, or other marking shall be located to the right of the knockout or hole made for the outlet pipe on the outlet end of the tank.

(2) Constructed on site. Septic tanks constructed on site of cast-in-place concrete, concrete block, or brick shall be constructed to conform with the requirements in subsection (1) of this section except as follows:

(a) Cast-in-place concrete septic tanks shall have a minimum wall thickness of six (6) inches.

(b) Concrete block or brick septic tanks shall have a minimum wall thickness of at least six (6) inches when the design volume is less than 1,000 gallons and a minimum wall thickness of at least eight (8) inches when the design volume is 1,000 gallons or more. All septic tanks constructed of block or brick shall be plastered on the inside with a 1:3 mix (one (1) part cement, three (3) parts sand) of portland cement at least three-eighths (3/8) inch thick or the equivalent using other approved waterproofing material.

(c) The bottom and top of the constructed on site septic tank shall be poured reinforced concrete with a minimum thickness of four (4) inches.

(d) For large capacity (5,000 gallons or more) cast-in-place concrete tanks, maximum liquid depth shall be sixty-six (66) inches.

(3) Prefabricated steel. Prefabricated steel septic tanks shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following:

(a) All prefabricated steel tanks shall be thoroughly coated on all surfaces with a minimum one-eighth (1/8) inch thick coating of liquid asphalt, mastic compound, plastic waterproofing compound, or liquid cured vinyl. Each such septic tank shall be accompanied on site delivery by a one-half (1/2) pint container of the coating material for use in touch-up coating of steel surfaces of the tank exposed through damage in shipping and handling. If such volume is insufficient to repair all damaged areas, additional coating material shall be secured by the installer.

(b) Coated steel baffles shall not be used in prefabricated steel tanks. Sanitary tees of approved plastic, fiberglass, or cast iron shall be required.

(4) Molded plastic, fiberglass. Septic tanks of molded plastic, fiberglass, or other such type of materials shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following: Baffles, if used in lieu of sanitary tees, shall be molded or formed in place so as to be an integral part of the tank. Glued, riveted, or otherwise mechanically attached baffles are not permitted (solvent welding on plastic tanks and resin bonding on fiberglass are acceptable). Such baffles shall be formed of material equal in thickness and rigidity to the tank wall material.

Section 5. Aerobic Treatment Units. (1) Precast concrete tank. All precast concrete tank aerobic treatment units shall comply with the construction requirements of Section 4(1)(a), (b), (c), (d), (e), (f) and (j) of this regulation, in addition to the following:

(a) All cast-in-place baffles, compartment walls, dividers, weirs, and other devices or structural forms shall be a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. Such reinforcing material shall extend into and along the tank sidewall a minimum of six (6) inches.

(b) Baffles, compartment walls, dividers, weirs, and other such devices or structural forms that are not cast-in-place or may be of dissimilar materials to the tank shall be of corrosion resistant materials, of sufficient structural strength and anchorage to the tank to prevent damage or dislodgement in normal operation, and where requiring routine maintenance, readily accessible through tank access manholes.

(c) All manholes providing access to mechanical or electrical components, chlorinating or other treatment devices, filters, etc., shall be provided with risers extending to grade to allow ready access for maintenance. Covers for such manholes or risers shall be provided with locks or other devices to prevent entry by unauthorized persons. On units which are intended to be installed flush with grade or above grade, which are designed to have an open top, suitable gridding, decking, or other such barriers to entry to the tank shall meet the 150 lb./sq. ft. support strength requirements and shall be so designed and installed to prevent entry to the tank or contact with its contents by unauthorized persons.

(2) Prefabricated steel. All prefabricated steel tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j), Section 4(3)(a), and Section 5(1)(b) and (c) of this regulation, in addition to the following: Coated steel, welded-in-place or mechanically attached baffles, compartment walls, dividers, weirs, and other devices or structural forms shall receive additional corrosion protection materials or coatings when they are exposed directly through splash or immersion on two (2) or more surfaces or sides to tank liquid contents.

(3) Molded plastic, fiberglass. All molded plastic or fiberglass tank aerobic treatment units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j), and Section 5(1)(b) and (c) of this regulation, in addition to the following: Baffles, compartment walls, dividers, weirs, and other such devices or structural forms, if cast or molded in place, shall be formed of material equal in thickness and rigidity to the tank material.

(4) Piping, mechanical devices and electrical equipment, filtration devices, and other appurtenances.

(a) All internal or external piping or conduits and fittings necessary to the transport of tank sewage contents between tank compartments, mechanical equipment, or other components of the treatment process involved shall be of Schedule 40 PVC or ABS plastic pipe. Mixing of PVC and ABS or other dissimilar plastic pipe or fittings is prohibited.

(b) Mechanical fittings and connections where used to connect PVC or ABS piping to equipment or components shall be corrosion resistant and of a type, design, and construction compatible for use with the type of pipe involved.

(c) Mechanical aerators, stirrers, diffusers, rotating disks, and other devices used to provide direct exposure of atmospheric air to tank sewage contents shall be constructed of corrosion resistant materials and of sufficient structural strength to withstand normal operating stresses without damage or deformation resulting in system malfunction for the designed service life of the device.

(d) Pumps, electrical motors, or other such devices shall be of sealed or submersible design and construction when subject to submersion, splash, or corrosive atmosphere within the aerobic treatment unit. Such pumps, motors, or other such devices shall be properly sized and designed for the intended use and duty cycle.

(e) Filters, chemical feeders, and other such devices shall be constructed of corrosion resistant materials and possess sufficient strength to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(f) Electrical controls, switches, ozone generators, ultraviolet generators, and other such devices relying upon electrical current for operation shall be designed and constructed as to be water and corrosive vapor proof in all portions of the device where electrical current carrying components are located. All such devices shall be properly grounded and otherwise designed, constructed, installed, and operated in accordance with National Electrical Code requirements.

(g) All fasteners, brackets, clips, hangers, or other such devices used in the anchorage, installation, mounting, or attachment of unit components and equipment both be designed and constructed of materials possessing sufficient strength and corrosion resistance to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(h) All components of aerobic treatment units which require routine maintenance shall be installed and located within the unit as to be readily accessible. Such components which require replacement, removal, or dismantling for routine maintenance shall be designed, constructed, and installed so as to facilitate their replacement, removal, or dismantling with simple tools. A maintenance instruction manual using pictures and simple language for identification of unit components, maintenance to be performed, components needing routine replacement, removal or dismantling procedures, maintenance interval, and simple troubleshooting procedures shall be included with all units. Such manual shall be provided to the ultimate operator or user of the unit. When aerobic treatment units are to be installed by other persons, rather than the manufacturer or his agents, a detailed installation manual shall be supplied outlining proper installation procedures including hookup to an electrical power source, unit startup procedures, and necessary adjustments or calibrations to be made to meet manufacturer's operating specifications for effluent quality.

Section 6. Dosing and Holding Tanks. (1) All dosing and holding tanks shall comply with the general construction requirements listed in Section 4 of this regulation for septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Access manholes for dosing or holding tanks shall be extended to grade through the use of suitable risers to permit ease of access for maintenance and/or pumping.

(b) Such manholes in dosing tanks shall provide a minimum opening of eighteen (18) inches by eighteen (18) inches into the tank. Manhole riser lids or covers shall be designed and constructed so as to be watertight and, through the use of locks, locking devices, or other means, prevent access to the tank by unauthorized persons.

(c) All dosing or holding tanks, due to their frequently empty or partially filled condition, shall be designed or installed (using suitable anchoring devices or anti-flotation devices) to prevent flotation or vertical shifting due to ground water pressure.

(2) All dosing and holding tank equipment,

controls, and appurtenances shall comply, where applicable, with the requirements of Section 5(4)(a), (b), (d), (f), (g) and (h) of this regulation, in addition to the following:

(a) High water alarms, including an audible alarm system within the structure served by the dosing or holding tank, shall be installed in such tanks and calibrated to sound an alarm whenever the tank liquid level reaches eighty-five (85) percent of capacity.

(b) When pumps are used for dosing effluent into the lateral field system or are used for lifting effluent to a lateral field system above the elevation of the dosing tank, electrically or mechanically operated switch controls shall be provided to permit automatic operation of such pumps. Manually operated pump controls are not permitted. When pumps are used, they shall be installed in an elevated position in respect to the tank bottom, by placement on stands designed for such purpose, concrete blocks, or through the use of suitable hangers to allow for sludge storage space and prolong service life of the pumps. Elevation distance from the tank bottom shall be a minimum of eight (8) inches.

(c) In lieu of pumps, automatic dosing siphons may be used for lateral field dosing where a suitable downhill gradient exists from the elevation of the siphon to the lateral field system.

Section 7. Distribution Devices. (1) Precast concrete.

(a) All precast concrete distribution boxes shall be designed and constructed to provide sufficient strength and structural integrity to withstand a vertical uniform load of 150 lb./sq. ft. on the top of the box.

(b) A minimum end product strength of 4,000 pounds per square inch shall be used in the construction of the box and lid.

(c) A minimum wall thickness of one and one-half (1 1/2) inches shall be used in the construction of distribution box bottoms, sidewalls, and lids and shall be reinforced by a minimum No. 10 gauge six (6) inch by six (6) inch welded steel reinforcing wire, or equivalents, as approved by the cabinet.

(d) Distribution box lids or covers shall meet the requirements of paragraph (a) of this subsection and shall be provided with suitable handles for removal.

(e) Knockouts or holes for inlet and outlet piping shall be of sufficient diameter to accept four (4) inch diameter piping but no more than five (5) inches in diameter at the inside surface of the box.

(f) All distribution devices offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name and the serial number assigned to the manufacturer's plans and specifications approved by the cabinet. This imprint, stencil, or other marking shall be located on the inlet end of the device. Low pressure pipe manifolds shall meet the identification requirements for plastic piping in Section 8 of this regulation.

(2) Molded plastic and fiberglass. Molded plastic or fiberglass distribution boxes shall be designed and constructed to meet the requirements listed in subsection (1)(a), (d), (e) and (f) of this section.

(3) Equal flow type design standards.

(a) Outlet holes or knockouts in equal flow boxes shall be spaced a minimum of seven (7) inches on centers to permit access for application of waterproofing sealants around lateral piping and the external surface of the box sidewall or endwall. Outlet holes or knockouts shall be located a minimum distance of six (6) inches on centers, on a single plane, above the inside bottom surface of the box and a minimum of three (3) inches on centers from adjacent sidewalls in the outlet portion of the box. At the inlet portion of the box a minimum distance of eight (8) inches on centers shall be maintained between outlet holes and the sidewall or endwall to allow for the placement of a baffle to retard incoming effluent velocity.

(b) Centerline of the inlet hole or knockout shall be a minimum distance of one and one-half (1 1/2) inches to a maximum of three (3) inches above the centerline of the outlets.

(c) Provision shall be made on all equal flow boxes for the insertion of a baffle on the inlet end of the box. Such provision may take the form of a double flange, molded or cast-in slot, or other acceptable means to retain the baffle in place. Baffle material and construction shall be equal to that used in the box itself. Baffles and their mounts or retainers shall be so designed as to provide a passageway for reduced velocity effluent between the box bottom and bottom edge of the baffle of no more than two (2) inches in height. The baffle shall extend to one (1) inch above the top of the inlet.

(d) Equal flow boxes shall be designed so as to provide unobstructed access, on removal of the lid or top, for direct, simultaneous viewing of all outlets to facilitate the performance of "water leveling" procedures during installation.

(4) Hillside or drop box type design standards.

(a) Lateral outlet holes or knockouts shall be located a minimum of four (4) inches on centers, on a single plane above the inside bottom surface of the box, and a minimum of three (3) inches on centers from adjacent sidewalls.

(b) Centerline of the inlet hole or knockout shall be a minimum of five (5) inches above the centerline of the lateral outlets and a minimum of three (3) inches above the centerline of the supply line outlet going to the next box in series.

(c) Hillside or drop boxes shall be designed so as to provide sufficient separation distance (twelve (12) inches or greater recommended) between the inlet sidewall and supply line outlet sidewall to minimize the risk of shortcircuiting of effluent under heavy flow conditions or on steep hillsides where gradient induced flow velocity is created. In lieu of this requirement, box designs offsetting the vertical centerlines of inlets and supply line outlets may be employed.

(5) Plastic low pressure pipe manifolds. All plastic pipe, fittings, and connectors used in low pressure pipe supply lines and manifolds shall be of Schedule 40 PVC or ABS construction and materials.

(6) Alternating valves and devices design standards.

(a) Alternating valves and devices shall meet the general design and construction standards listed in subsection (1)(a) and (d) of this section, and if constructed of precast concrete, subsection (1)(b) and (c) of this section as well.

(b) All alternating valves and devices shall be designed and constructed to provide a

positive seal to each outlet when in a closed position. The valving device shall be constructed of corrosion resistant materials and of sufficient strength to withstand normal operational stresses without damage or deformation resulting in valve malfunction.

(c) All alternating valves and devices shall be fitted with risers and watertight lids or covers, extending to grade, which will permit unobstructed access for maintenance, inspection, and operation.

Section 8. Piping, Fittings, and Connectors.

(1) Non-perforated pipe - gravity flow usage.

(a) All non-perforated piping used for gravity flow carriage of effluent between septic tanks in series, septic tanks or other treatment units and distribution and/or alternating devices, and for two (2) feet into lateral trenches or beds from distribution devices shall be at least SDR 35 ASTM-D3034 and D3033 for PVC and ASTM-D2751 for ABS. 1,500 lb. crush ASTM-F810 for polyethylene may be used between distribution devices and lateral trenches or beds.

(b) All such non-perforated piping shall be of a minimum internal diameter of four (4) inches.

(c) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the SDR 35 ASTM D3034, D3033, or D2751, 1,500 lb. crush ASTM-F810 designation, and the type of pipe material (PVC, ABS, or polyethylene).

(2) Non-perforated pipe - pressure usage.

(a) All non-perforated piping used for pressurized carriage of effluent between dosing or pumping and distribution and/or alternating devices shall be of 160 psi PVC or ABS.

(b) 160 psi polyethylene pipe or equivalent may be used in all applications listed above in lieu of PVC or ABS piping, except in the construction of any portion of a low pressure pipe (LPP) system where PVC or ABS pipe shall be required.

(c) Each standard section of pipe as supplied by the manufacturer, or in the case of polyethylene or equivalent piping rolls at not greater than ten (10) foot intervals, shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the 160 psi designation, and the type of pipe material.

(d) All such pipe used on an individual low pressure pipe (LPP) system installation shall be of the same type of material - mixing of PVC, ABS, polyethylene, or other equivalent piping is prohibited.

(3) Perforated pipe - gravity flow usage.

(a) All perforated pipe used for gravity flow carriage and distribution of effluent within lateral trenches, beds, mounds, or other such applications shall meet 1,500 lb. crush ASTM-F810 standards for rigid piping and ASTM-F405 for corrugated semi-rigid piping.

(b) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the type of pipe material, and showing the product meets applicable ASTM standards and a bearing load of 1,500 lbs., per foot. In addition, a painted or other clearly marked line or spot shall be marked on each section to denote the top of the pipe.

(c) All such gravity flow usage perforated pipe shall have a minimum internal diameter of two (2) inches.

(d) On two (2) inch or three (3) inch diameter pipe: if one (1) row of holes is use, it shall be located directly opposite the top marking on the pipe and holes shall be three-eighths (3/8) inch in diameter; if two (2) rows of holes are used, they shall be one-quarter (1/4) inch to five-sixteenths (5/16) inch in diameter, and evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. Spacing of holes longitudinally shall be between eight (8) to twelve (12) inches on centers.

(e) All four (4) inch diameter or greater pipe shall have at least two (2) rows of holes five-sixteenths (5/16) to one-half (1/2) inch in diameter, evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. If three (3) holes are used, the center row shall be directly opposite the top marking. Spacing of holes longitudinally shall be between three (3) to twelve (12) inches on centers.

(4) Perforated pipe - pressure usage, low pressure pipe systems (LPP).

(a) Pipe used for pressure carriage and distribution of effluent within lateral trenches, beds, mounds, or other low pressure pipe (LPP) applications shall be of 160 psi PVC or ABS construction.

(b) Pipe shall meet the requirements listed under subsection (2)(c) and (d) of this section.

(c) Minimum pipe internal diameter shall be determined on a case-by-case basis, based upon system size, configuration, and other factors necessary in the design of a low pressure pipe system. In no case shall the internal diameter be less than one (1) inch.

(d) Pipe perforations shall run in a straight line along the bottom of the pipe. Where pre-perforated pipe is unavailable, perforations shall be hand-drilled, and deburred. Hole diameters and hole spacing shall be determined on a case-by-case basis relative to design requirements of the low pressure pipe system. Hole sizes may range from three thirty-seconds (3/32) to one-fourth (1/4) inch in diameter, and hole spacing form three (3) to five (5) feet depending on design requirements.

(5) Fittings and connectors.

(a) Piping elbows, tees, wyes, reducers, end caps, plugs, connectors, and other such fittings shall be designed and constructed for the intended use.

(b) Fittings and connectors shall be formed of materials compatible with the piping to which they are joined and meet the same standards as that piping. Mixing of different pipe and fitting materials except when expressly designed and constructed for such purpose is prohibited.

(c) Joints formed between fittings, connectors, and/or piping shall be rigid and watertight and shall be made by the methods (solvent welding, chemical fusion, mechanical compression, etc.) applicable to the materials joined.

Section 9. Trench Fill and Barrier Material.

(1) Trench fill material.

(a) Gravel or crushed dolomitic limestone shall be used for bedding and trench fill material for gravity flow lateral lines. Foreign matter, dust, and fines shall be removed. Such material shall be of sufficient hardness to attain a three (3) on the Moh's Scale (material hard enough to scratch a copper penny without crumbling or powdering shall be considered acceptable). A size range of three-quarters

(3/4) inch to two and one-half (2 1/2) inches in rough diameter shall be used, and material shall be graded for uniformity in size.

(b) Other materials such as blast furnace slag may be considered for usage if such materials can meet or exceed all of the requirements of paragraph (a) of this subsection.

(c) Pea gravel shall be used for bedding and trench fill material for low pressure pipe systems.

(d) Graded sands used for the construction of mound systems or filter units shall be sized according to the design requirements of the system or unit involved.

(e) Crushed rock, gravel, pea gravel, sand, or other such materials meeting the requirements of this section for use as trench fill, lateral bedding material, mound fill, or filter material may be used, as applicable, in the construction of curtain, vertical, and underdrain ground water drainage systems.

(2) Trench barrier material.

(a) Straw, hay, grass clippings, or synthetic filter fabrics shall be used in all lateral trenches, beds, mounds, subsurface sand filters, or ground water drainage systems to provide a barrier to the entrance of soil backfill into the rock, gravel, pea gravel, or sand fill in such trenches, beds, mounds, filters, or drainage systems.

(b) Other similar materials may be considered for such usage provided that they can be demonstrated to perform in an equivalent manner with the above and do not restrict air movement within the trench, bed, mound, filter, or drainage system.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 12, 1985
FILED WITH LRC: December 23, 1985 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 E. Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by February 16, 1986 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, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Unknown, some manufacturer may experience additional cost for retooling, if necessary.
2. Continuing costs or savings: Could be some savings to manufacturer, since regulation would clearly spell out requirements.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Decreasing cost should result for the consumer due to enhanced competition among manufacturers.
(b) Reporting and paperwork requirements: One time submission of design and specifications of materials manufactured, also submission required when specifications are changed or new products designed.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Routine reviewing of design and specification of materials manufactured.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Previously approved by State Plumbing Code Committee, but no established standards were ever adopted - 1982 Kentucky General Assembly required this agency to adopt new methods of approval.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Would not apply.

CABINET FOR HUMAN RESOURCES:
Department for Health Services
Product Safety Branch

902 KAR 47:060. Safety of toys and children's products.

RELATES TO: KRS 211.180
PURSUANT TO: KRS 194.050, 211.090, 211.180
NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Human Resources to adopt regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe environment, and regulations for the protection and improvement of health of infants, preschool and school age children. The function of this regulation is to establish uniform safety standards, labeling requirements, and testing procedures for toys and certain children's products.

Section 1. Scope and Application. The Cabinet for Human Resources hereby adopts by reference for the Commonwealth of Kentucky the requirements for toys and children's products set forth in Section 2 of this regulation that have been established as standards by the U.S. Consumer Product Safety Commission in 16 Code of Federal Regulations (CFR) Part 1500, Revised January 1, 1985. A copy of the publication is on file in the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 2. Safety Standards, Labeling

Requirements, and Testing Procedures for Toys and Children's Products. The following parts of 16 CFR 1500 are adopted by reference:

(1) Part 1501. Sec. 1501.1 through 1501.4 - Methods for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards because of Small Parts.

(2) Part 1505. Sec. 1505.1 through 1505.8 and 1505.50 - Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children.

(3) Part 1508. Sec. 1508.1 through 1508.11 - Requirements for Full-Size Baby Cribs.

(4) Part 1509. Sec. 1509.1 through 1509.13 - Requirements for Non-Full-Size Baby Cribs.

(5) Part 1510. Sec. 1510.1 through 1510.4 - Requirements for Rattles.

(6) Part 1511. Sec. 1511.1 through 1511.8 - Requirements for Pacifiers.

(7) Part 1512. Sec. 1512.1 through 1512.20 and Sec. 1512.50 - Requirements for Bicycles.

Section 3. Compliance. Toys and children's products which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission, shall be deemed to be in compliance with this regulation.

Section 4. Issuance and Service of Notice of Violation. (1) When test procedures adopted by reference in Section 2 of this regulation reveal that toys and children's products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of such violations by means of a written notice. Such notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of such violations; and

(c) State that an opportunity for appeal from any notice of findings will be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of findings.

(2) Notices provided for under this regulation shall be deemed to have been properly served when the written notification of findings has been personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge, or when such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge. A copy of such notice shall be filed in the records of the cabinet.

Section 5. Hearings. Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this regulation shall be conducted at a time and place designated by the cabinet. The cabinet shall make written findings of fact and conclusions of law.

Section 6. Quarantine and Recall. In the event toys and children's products do not meet the applicable requirements set forth in this regulation as to safety standards, labeling requirements, and/or testing procedures after the effective date of this regulation, the cabinet may quarantine or require the recall of any such article or articles. If a toy or children's product applicable to this regulation fails to meet the requirements as set forth herein, the manufacturer, distributor, or importer of such toy or children's product may be requested by the cabinet to initiate a voluntary recall of the toy or children's product from those wholesale and retail establishments to which the toy and children's product was distributed. The responsible manufacturer, distributor, or importer shall provide the cabinet with a copy of the recall with a listing of all establishments contacted, the amount or number of toy or children's product returned to the recalling establishment, and the disposition of the toy or children's product in violation.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager

(1) Type and number of entities affected: Manufacturers, importers, distributors and retailers of toys and children's products located in or distributed into the Commonwealth and the consumers thereof.

(a) Direct and indirect costs or savings to those affected: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None required.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method known.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None on state level - complements and is identical to but has no effect on U.S. Consumer Product Safety Commission regulations.

(a) Necessity of proposed regulation if in conflict: N/A

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

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES:
Department for Health Services
Product Safety Branch

902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

RELATES TO: KRS 211.180
PURSUANT TO: KRS 194.050, 211.090, 211.180
NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Human Resources to adopt regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe environment. The function of this regulation is to establish uniform flammability safety standards, labeling requirements, and testing procedures for clothing textiles, vinyl plastic films, children's sleepwear, carpets and rugs, and mattresses and mattress pads.

Section 1. Scope and Application. The Cabinet for Human Resources hereby adopts by reference for the Commonwealth of Kentucky the requirements for flammable fabrics and certain products manufactured from flammable fabrics set forth in Section 2 of this regulation that have been established as standards by the U.S. Consumer Product Safety Commission in 16 CFR, revised January 1, 1985. A copy of the publication is on file in the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and shall be open for public inspection. Copies are available from the superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 2. Safety Standards, Labeling Requirements, and Testing Procedures for Flammable Fabrics and Flammable Fabric Products. The following parts of 16 CFR revised as of January 1, 1985, are hereby adopted by reference:
(1) Part 1610. Sec. 1610.1 through 1610.5; 1610.31 through 1610.40 and 1610.61 - Standard for the Flammability of Clothing Textiles.
(2) Part 1611. Sec. 1611.1 through 1611.4 and 1611.31 through 1611.38 - Standard for the Flammability of Vinyl Plastic Film.
(3) Part 1615. Sec. 1615.1 through 1615.5; 1615.31 through 1615.36; and 1615.62 through 1615.64 - Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71).
(4) Part 1616. Sec. 1616.1 through 1616.6; 1616.31 through 1616.36 and 1616.62 through 1616.65 - Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74).
(5) Part 1630. Sec. 1630.1 through 1630.5; 1630.31 through 1630.32 and 1630.61 through 1630.63 - Standard for the Surface Flammability of Carpets and Rugs (FF 1-70).
(6) Part 1631. Sec. 1631.1 through 1631.5; 1631.31 through 1631.34, 1631.61, and 1631.62 - Standard for the Surface Flammability of Small Carpets and Rugs (FF 2-70).
(7) Part 1632. Sec. 1632.1 through 1632.8; 1632.31 and 1632.63 - Standards for the Flammability of Mattresses and Mattress Pads (FF 4-72, Amended).

Section 3. Compliance. Flammable fabrics and flammable fabric products which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission, shall be deemed to be in compliance with this regulation.

Section 4. Issuance and Service of Notice of Violation. (1) When test procedures adopted by reference in Section 2 of this regulation reveal that flammable fabrics and flammable fabric products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of such violations by means of a written notice. Such notification shall:
(a) Set forth the specific violations found;
(b) Establish a specific and reasonable period of time for the correction of such violations; and
(c) State that an opportunity for appeal from any notice of findings will be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of findings.
(2) Notices provided for under this regulation shall be deemed to have been properly served when the written notification of findings has been personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge, or when such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge. A copy of such notice shall be filed in the records of the cabinet.

Section 5. Hearings. Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this regulation shall be conducted at a time and place designated by the cabinet. The cabinet shall make written findings of fact and conclusions of law.

Section 6. Quarantine and Recall. In the event flammable fabrics or flammable fabric products do not meet the applicable requirements set forth in this regulation as to safety standards, labeling requirements, and/or testing procedures after the effective date of this regulation, the cabinet may quarantine or require the recall of any such article or articles. If a flammable fabric or flammable fabric products applicable to this regulation fails to meet the requirements as set forth herein, the manufacturer, distributor, or importer of such flammable fabric or flammable fabric products may be requested by the cabinet to initiate a voluntary recall of the flammable fabric or flammable fabric products from those wholesale and retail establishments to which the flammable fabric or flammable fabric products was distributed. The responsible manufacturer, distributor, or importer shall provide the cabinet with a copy of the recall with a listing of all establishments contacted, the amount or

number of flammable fabric or flammable fabric products returned to the recalling establishment, and the disposition of the flammable fabric or flammable fabric products in violation.

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: December 11, 1985
FILED WITH LRC: January 9, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for February 21, 1986 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 February 16, 1986 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: E. Edsel Moore, Manager
(1) Type and number of entities affected: The manufacturers, importers and distributors of flammable fabrics or flammable fabric products located in or distributed into the Commonwealth and the consumers thereof.
(a) Direct and indirect costs or savings to those affected: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None required.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate method known.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None on state level - identical to and complements but has no effect on U.S. Consumer Product Safety Commission's regulations.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes

REPRINT

COMPILER'S NOTE: In Section 7 of the following regulation, the Compiler's office inadvertently failed to insert brackets around the words "who do not request time off to vote or". Therefore, this regulation is being reprinted.

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
EFFECTIVE: December 10, 1985
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 of Service	Annual Leave Days
0-60 months	1 leave day per month; 12 per year
61-120 months	1 1/4 leave days per month; 15 per year
121-180 months	1 1/2 leave days per month; 18 per year
181 months 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 of Service	Annual Leave Days
0-60 months	1 leave day per month; 12 per year
61-120 months	1 1/4 leave days per month; 15 per year
121-180 months	1 1/2 leave days per month; 18 per year
181 months 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 of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days
240 months and over	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 of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days
240 months and over	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. 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 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 shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) An employee 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" 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. Compensatory leave used during the same workweek it is earned 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 who have accumulated at least 151 hours of compensatory leave but has not accumulated 200 hours 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.

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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the January 2-3, 1986 Meeting

The January meeting of the Administrative Regulation Review Subcommittee was held on Thursday, January 2, 1986 at 1:30 p.m. and on Friday, January 3, 1986 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 Representatiave Bruce, seconded by Representative Meyer, the minutes of the December 9-10, 1985 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senators Harold Haering, and Pat McCuiston; Representatives James Bruce and Joe Meyer.

Guests: Commissioner Tommy Greenwell, Anne Keating, Chuck Vineyard, Department of Personnel; Arthur Hatterick, Jr., Personnel Board; Jim Terry, Personnel Board member; Don J. Dampier, Personnel Board Employee Advisory Committee; Bill Stevens, Kentucky Association of State Employees; John Carr, Coalition of State Employees Organizations; Richard Casey, Joyce A. Bryan, Kentucky Higher Education Assistance Authority; Bill Graves, Department of Fish and Wildlife Resources; Carroll Roberts, Board of Hairdressers and Cosmetologists; Nancy B. Bergen, Board of Medical Licensure; Thomas M. Troth, Department of Agriculture; Bruce McCutchen, Betty D. Claycomb, Revenue Cabinet; Barbara W. Jones, Corrections Cabinet; Gary Bale, Jim Batts, William Gary Steinhilber, Department of Education; Ellen Hellard, James A. Nelson, Department for Libraries & Archives; Donald N. Butera, Carson E. Smith, Reginald Thomas, Kentucky State University; Edward A. Farris, Catherine Staib, Department of Alcoholic Beverage Control; Claude G. Rhorer, Public Service Commission; Dan Armstrong, Pam Burkich, David E. Cathers, Barbara Coleman, Steve Donoghue, Eva Ellis, Louise M. Ervin, Ked R. Fitzpatrick, Victor Gausepohl, Anne Hager, Dorman Harrod, Margaret Hockensmith, Donald R. Hughes, Sr., Ken Jackson, Greg Lawther, Edsel Moore, Lynn Owens, Linda Snodgrass, Phillip R. Spangler, Larry Taylor, Thyra Whitford, Mark Yancey, Cabinet for Human Resources; Etta Ruth Kepp, Governor's Office for Policy & Management.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, June Mabry, and Donna Valencia.

Press: Fran Ellers, The State Journal.

The Subcommittee determined that the following regulations, amended as agreed by the subcommittee and promulgating body, complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority

11 KAR 4:050 (Set off of authority claims.) Representative Meyer questioned the authority granted the hearing officer or committee to make a decision and stated that a decision could be made only by the board. The agency agreed to amend the last two sentences in subsection (3) to read as follows: "The hearing officer or committee shall prepare written findings of fact and conclusion for submission to the full board. The decision shall be made by the authority, and shall be final and conclusive as to all parties."

KHEAA Grant Programs

11 KAR 5:100 (Records and reports.) Representative Meyer questioned the intent or meaning of Section 2(1)(b). The agency stated that "award year" is understood to mean the normal academic year. Records would be maintained for 5 years after the academic year in which the recipient ceases enrollment. The agency agreed to change "award year" to "academic year."

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:022 (Kentucky administrative process for child support.) The agency agreed to amend this regulation to restore the thirty-two day delinquency period. Representative Meyer questioned the authority of the cabinet to administratively establish a child support obligation when no court order establishing such obligation existed or when the noncustodial parent had not agreed to child support. A motion to approve the regulation without attaching a statement of objection carried; 3 yeas, 1 nay, Representative Meyer voting no.

The Subcommittee objected to a subsection of the following regulation, and attaches the following statement and recommendation:

Department of Personnel: Personnel Rules
101 KAR 1:051 (Compensation plan.) The subcommittee determined that the amendments to this regulation presented by the Commissioner of Personnel were the only amendments properly before the subcommittee for the following reasons: (1) KRS 18A.110(2) requires the governor's approval before a compensation plan is effective; (2) The governor had approved the commissioner's amendments to this regulation; (3) Prior to presentation to the governor for approval, the Personnel Board had approved these amendments and could not rescind its approval without the concurrence of the governor.

The subcommittee approved a motion to attach the following statement to this regulation: "Section 4(9)(c) in the amended version of this regulation exceeds the statutory authority granted under KRS 18A.095 since the restriction of employees' right to appeal is a matter that could be determined only by the General Assembly."

The subcommittee approved a motion to refer this matter to the House and Senate State Government Committees for legislation during the 1986 General Assembly.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

KHEAA Grant Programs
11 KAR 5:080 (Disbursement procedures.)
11 KAR 5:090 (Refund and repayment policy.)

Revenue Cabinet: Ad Valorem Tax; Local Assessment
103 KAR 7:020 (Release of funds by financial institutions.)

General Government Cabinet: Board of Medical Licensure
201 KAR 9:021 (Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements, approved programs, recognition of degrees.)
Board of Hairdressers and Cosmetologists
201 KAR 12:050 (Reciprocity for valid licensee.)
201 KAR 12:105 (School districts.)
201 KAR 12:120 (School faculty.)

Tourism Cabinet: Fish and Wildlife Resources: Game
301 KAR 2:140 (Seasons for wild turkey.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:020 (Corrections policies and procedures.)

Education and Humanities Cabinet: Department of Education: Office of Local Services: School Terms, Attendance and Operation
702 KAR 7:070 (Interscholastic athletic eligibility and requirements; redshirting prohibited.)
Department for Libraries and Archives: Libraries
725 KAR 2:020 (Certification of public librarians.)

General Government Cabinet: Kentucky State University: Board of Regents
745 KAR 1:010 (Acquisition and disbursement of funds.)
745 KAR 1:020 (Annual audit.)
745 KAR 1:030 (Purchasing, inventories, sales of surplus property, bidding procedures.)
745 KAR 1:040 (Disposal of property, proceeds; title.)
745 KAR 1:050 (Issuance of bonds.)
745 KAR 1:060 (Delegation of financial management responsibility.)

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing
804 KAR 4:280 (Affiliated businesses.)

Public Service Commission: Utilities
807 KAR 5:002 (Organization.)

Cabinet for Human Resources: Department for Health Services: Local Boards of Health
902 KAR 8:020 (Policies and procedures for local health department operations.)
Radiation and Product Safety Branch
902 KAR 47:050 (Ban of paint, coatings, and certain consumer products containing lead.)
Radiology
902 KAR 100:005 (General applicability.)
902 KAR 100:010 (Definitions.)
902 KAR 100:015 (General requirements.)
902 KAR 100:017 (Special requirements for teletherapy licensees.)
902 KAR 100:020 (Standards for protection against radiation.)
902 KAR 100:021 (Disposal of radioactive material.)
902 KAR 100:022 (Licensing requirements for land disposal of radioactive waste.)
902 KAR 100:025 (Concentrations above natural background for air and water.)
902 KAR 100:030 (Posting and disposal requirements.)
902 KAR 100:035 (Receiving radioactive material and special form tests.)
902 KAR 100:040 (General provisions for specific licenses.)
902 KAR 100:045 (Exemptions.)
902 KAR 100:050 (General licenses.)
902 KAR 100:051 (Specific licenses for human use.)
902 KAR 100:052 (Broad scope licenses.)
902 KAR 100:058 (Specific licenses to manufacture, assemble, repair, or distribute products.)
902 KAR 100:060 (Leak testing.)
902 KAR 100:065 (Reciprocal recognition.)
902 KAR 100:070 (Transportation of radioactive material.)
902 KAR 100:075 (Group classifications.)
902 KAR 100:080 (Exempt quantities.)
902 KAR 100:085 (Exempt concentrations.)
902 KAR 100:090 (Broad license limits.)
902 KAR 100:095 (Sealed sources.)
902 KAR 100:100 (Industrial radiography.)
902 KAR 100:142 (Wireline service operations.)
902 KAR 100:165 (Notices, reports and instructions to employees.)
Department for Employment Services: Unemployment Insurance
903 KAR 5:260 (Unemployment insurance procedures.)

Department for Social Insurance: Medical Assistance

904 KAR 1:009 (Physicians' services.)
904 KAR 1:020 (Payment for drugs.)
904 KAR 1:026 (Dental services.)
904 KAR 1:027 (Payments for dental services.)
904 KAR 1:250 (Incorporation by reference of materials relating to the Medical Assistance Program.)

Department for Social Services: Community Action Agencies

905 KAR 6:020 (State plan for CSBG program.)

Children's Residential Services

905 KAR 7:110 (Northern Kentucky Treatment Center policy and procedures manual.)
905 KAR 7:210 (Central Kentucky Re-Ed Center policy and procedural manual.)
905 KAR 7:220 (Owensboro Treatment Center policy manual.)

Aging Services

905 KAR 8:120 (Homecare policy manual for the elderly.)

The following regulations were deferred at the agency's request:

Commerce Cabinet: Department of Agriculture: Pesticides

302 KAR 31:010 (Hearings upon denial, suspension, modification, or revocation of licenses.)

Cabinet for Human Resources: Department for Health Services: State Health Plan

902 KAR 17:010 (State health plan.)

The Subcommittee had no objections to emergency regulations which had been filed.

Other business:

201 KAR 11:190 (Rules of practice and procedure for hearings before the Kentucky Real Estate Commission.) This regulation had been considered by the Subcommittee at its December, 1985, meeting. Representative Meyer stated that Section 6(3) provided that on appeals of final orders of the commission a de novo hearing would not be permitted. He stated that this rule was the subject of litigation, a fact of which the Commission did not notify the subcommittee when it considered this regulation. Representative Meyer made a motion that the subcommittee request the Commission to amend this regulation to delete Section 6(3). The motion carried.

The Subcommittee adjourned at 11:30 a.m. until February 3, 1986.

CUMULATIVE SUPPLEMENT

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

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101 KAR 1:145E	1207	1-15-86
101 KAR 1:205E	1208	1-15-86
201 KAR 9:021E	646	11-4-85
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301 KAR 2:044E	313	8-2-85
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405 KAR 7:020E	1139	12-2-85
405 KAR 8:050E	1147	12-2-85
405 KAR 20:070E	1152	12-2-85
600 KAR 1:045E	315	7-26-85
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603 KAR 5:070E	104	7-8-85
Replaced	231	9-10-85
702 KAR 3:190E	1211	1-10-86
702 KAR 7:070E	1153	11-18-85
Replaced	962	1-3-86
704 KAR 3:355E	391	7-13-85
Replaced	417	11-12-85
704 KAR 10:022E	1211	1-13-86
704 KAR 20:045E	107	6-26-85
Replaced	239	9-10-85
815 KAR 7:013E	472	9-25-85
Replaced	638	12-10-85
902 KAR 6:060E	109	7-10-85
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902 KAR 8:030E	1212	12-17-85
902 KAR 10:081E	1213	12-23-85
902 KAR 12:030E	110	6-27-85
Replaced	260	9-10-85
902 KAR 12:080E	1154	11-18-85
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903 KAR 2:010E	1	6-11-85
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903 KAR 5:270E	110	6-28-85
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904 KAR 1:010E	316	8-2-85
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904 KAR 1:011E	2	5-17-85
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904 KAR 1:013E	317	8-2-85
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904 KAR 1:015E	319	8-2-85
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904 KAR 1:020E	649	11-4-85
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904 KAR 1:022E	394	8-30-85
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904 KAR 1:031E	319	8-2-85
Replaced	370	11-12-85
904 KAR 1:036E	112	6-28-85
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Resubmitted	320	8-2-85
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904 KAR 1:045E	118	6-28-85
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Resubmitted	326	8-2-85
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904 KAR 1:055E	119	6-28-85
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904 KAR 1:250E	120	7-10-85
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904 KAR 2:006E		
Replaced	6	5-17-85
Resubmitted	6	5-17-85
Replaced		7-9-85
904 KAR 2:116E	481	9-27-85
Replaced	623	12-10-85
904 KAR 2:140E	121	7-10-85
Replaced	286	9-10-85
Resubmitted	484	10-8-85
Replaced	626	12-10-85
904 KAR 2:150E	122	7-10-85
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904 KAR 2:170E	123	7-10-85
Replaced	288	9-10-85
Resubmitted	485	10-8-85
Replaced	627	12-10-85
904 KAR 2:200E	9	6-11-85
Replaced	73	8-13-85
904 KAR 3:090E	124	7-10-85
Replaced	289	9-10-85
Resubmitted	486	10-8-85
Replaced	628	12-10-85
905 KAR 1:180E	327	7-17-85
Replaced	290	9-10-85
905 KAR 6:020E	396	8-23-85
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905 KAR 7:030E	9	6-6-85
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11 KAR 5:010		
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11 KAR 5:080		
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11 KAR 6:010		
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11 KAR 7:010	1447	
15 KAR 1:020		
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15 KAR 1:021	458	11-12-85
20 KAR 1:010	1193	
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103 KAR 7:020		
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